



Article

Family Law

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If you win the lottery, your ex might hit the jackpot, too

By Adam N. Black

For many family law lawyers, a cocktail party can become a hotbed for questions rooted in “what if” and “I’m asking for a friend.” For the curious party-goer, the topics inevitably focus on the sensational: infidelity, hiding assets and enormous support obligations. At a recent gathering, I was asked about a June 2019 court decision coming out of Michigan in which the husband was ordered to pay his former wife US\$15 million of his approximately US\$38 million lottery winnings.

In the Michigan case, the parties were married in October 2004 and the wife filed for divorce in September 2011. The parties remitted the resolution of the issues arising from their separation to a private and binding arbitration process. In July 2013, prior to the granting of a divorce, the husband won a US\$80 million Mega Millions jackpot. After taxes and deductions, the husband walked away with approximately \$38 million – until his former wife asked for a share of the winnings.

The arbitration became a protracted process that lasted approximately three years, during which the arbitrator issued several awards. Of significance, the arbitrator noted the winning lottery ticket was likely not the first ticket the husband purchased during the marriage. According to the arbitrator, since “losses throughout the marriage were incurred jointly, so should winnings be shared jointly.” On that basis, the husband was required to pay the wife US\$15 million.

In court proceedings, the husband sought to set aside the arbitrator’s award on the basis that the winnings should not be considered marital property because the husband purchased the lottery ticket several years after the parties’ separation. The trial court denied the husband’s request. On appeal, the State of Michigan Court of Appeals similarly denied the husband’s request. The appellate court noted that “the arbitrator determined the husband’s winnings were part of the marital estate” and agreed with the arbitrator’s observation that “marital property includes all property acquired from the date of marriage until the date of entry of the divorce decree. Property that is acquired between separation and actual divorce is marital property.”

In Ontario, and in many jurisdictions across Canada, the sharing of lottery winnings after separation is very unlikely. That said, the fight over the sharing of lottery winnings has not been without its controversy in Canada.

In 2008, in what many would consider to be an unusual set of facts, a husband and wife were ordered to equally share a \$1 million lottery prize arising from a ticket the husband purchased. In that case, the parties were married in 1990 and divorced seven years later. Notwithstanding their divorce, the parties continued to live together in a spousal-like relationship for several years after the divorce. Throughout their continued cohabitation, the parties had a habit of purchasing lottery tickets. The husband would check the winning numbers on the evening news and the wife would check the numbers again in a store some time later.

On Feb. 7, 2007, the husband purchased a lottery ticket. In the usual fashion, he checked the ticket that night and found only two matching numbers. The wife attended at a store two days later, where she learned the Encore number was, in fact, a \$1 million winner.

The wife concealed the win from the husband. The wife provided a false story to the husband to conceal her trip to the OLG offices in Toronto where she intended to claim the prize. In fact, the wife did not inform the husband of the win until an OLG representative asked the wife where the ticket was purchased. The wife was unable to answer the question and told the OLG representative the ticket was a gift from her former husband.

The wife deposited the winnings into her bank account. She subsequently gave the husband \$300,000. When the husband asked for more, the wife refused. The husband commenced court proceedings, wherein he sought a further \$200,000 from the wife, based on an equal sharing of the winnings. The wife resisted, saying the lottery ticket was a gift from the husband or, in the alternative, that the husband had abandoned the lottery ticket.

The court disagreed. In arriving at his decision to order the wife to pay the husband \$200,000, Justice Gordon of Ontario's Superior Court of Justice found the husband's "behaviour was consistent with his expectation of equal sharing of or a joint asset. He became upset when his request for money was denied by the wife."

Conversely, the judge found the wife's actions "raised suspicion," noting that "despite a history of checking his lottery tickets, the wife did not inform the husband of a win until OLG inquired as to the place of purchase."

In his concluding remarks, Justice Gordon noted that the parties followed "a well established practice whereby the wife checked the winning lottery numbers at the store. This lottery ticket was purchased by the husband and ownership remained with him. The nature of the relationship prevents the husband claiming all of the proceeds. The prize is to be equally shared."

In all of this, what is the lesson for the curious party-goer who is asking a question for a friend? Be sure to check your own lottery tickets.

This article originally appeared in the National Post.

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