



## Article

### Family Law

March 2022

# Judge awards damages for 'family violence' in landmark case

By Adam N. Black

In a ground-breaking decision, an Ontario court recently ordered a husband to pay his former wife damages of \$150,000 on account of the physical and psychological abuse she endured over their 17-year marriage. In making the award, the court gave life to a new tort, or civil wrong, of “family violence” that addresses the cumulative impact of an abusive marriage.

In the case before Justice Renu Mandhane of the Ontario Superior Court of Justice, the parties had met in 1999, married shortly thereafter and welcomed their first child 18 months after marriage. Following their immigration to Canada from India in 2001 and 2002, both parties worked in a factory, alternating day and night shifts in order to care for the parties’ first child and to make financial ends meet. In 2004, their second child was born.

On many occasions during the parties’ relationship, the wife was subject to serious physical assaults. According to Justice Mandhane, the “general pattern was that the father would become irrationally jealous, drink, engage in verbal arguments, and then beat the mother.”

At trial, the mother’s accounts of the physical assaults were deeply troubling. They included numerous assaults over several years, including being beaten “black and blue,” being subject to a “hard beating,” being shaken, slapped and strangled. Following the abusive episodes, the father would often subject the mother to weeks or months of silent treatment which ended only after the mother complied with the father’s demands for sexual intercourse.

The father’s abusive behaviour was also psychological. He closely monitored the mother’s spending and controlled the family’s finances. The father belittled and insulted the mother and repeatedly threatened to leave her and the children penniless. The father followed through on his threat when he abandoned the mother and the children in 2016, at which time he closed the parties’ joint accounts and cancelled the credit card the mother used to purchase groceries. The father did so despite the mother being “totally financially dependent on him,” something the father admitted.

Over the course of an 11-day trial, Justice Mandhane was asked to determine the mother's claim for "general, exemplary and punitive damages for the physical and mental abuse" arising from the father's abusive behaviour. It was the father's view that the mother's claims were grounded in three specific incidents of battery and emotional abuse, both of which are existing tort claims. Conversely, it was the mother's position that it was an overall pattern of abuse and coercive and controlling behaviour that gave rise to her claims and that the specific incidents of abuse were examples in a broader matrix.

Justice Mandhane agreed with the mother and, in so doing, penned a new tort called family violence. In recognizing the new tort, Justice Mandhane had specific regard to recent amendments to the Divorce Act, which applies across all Canadian provinces and territories. According to Justice Mandhane, those amendments, which went into effect in 2021, "explicitly recognized the devastating, life-long impact of family violence on children and families."

Despite the changes, Justice Mandhane noted that the legislation did not address all the legal issues raised by an allegation of family violence.

"At its heart, spousal support is compensatory rather than fault driven. As such, spousal support awards are not meant to censure particularly egregious conduct during the family relationship that calls out for aggravated or punitive damages," she wrote.

In fact, the Divorce Act makes clear that a judge must not consider a spouse's misconduct when making an order for spousal support.

Justice Mandhane continued by noting the Divorce Act "does not provide a victim/survivor with a direct avenue to obtain reparations for harms that flow directly from family violence and that go well-beyond the economic fallout of the marriage... (T)he no-fault nature of family law must give way where there are serious allegations of family violence that create independent, and actionable harms that cannot be compensated through an award of spousal support."

The judge filled in the legislative gap by recognizing the new tort of family violence and went on to set out a test to be applied in assessing if damages ought to be awarded. Specifically, damages may be awarded on account of conduct by a family member in a family relationship, that 1) is violent or threatening, or 2) constitutes a pattern of coercive and controlling behaviour, or 3) causes the family member to fear for their own safety or that of another person.

Justice Mandhane acknowledged that the tort of family violence likely overlaps with existing torts, but said there were unique elements that justified a unique cause of action.

"Existing torts do not fully capture the cumulative harm associated with the pattern of coercion and control that lays at the heart of family violence cases and which creates the conditions of fear and helplessness," she wrote in her ruling.

According to Justice Mandhane, the award of \$150,000 is comprised of \$50,000 in compensatory damages "in relation to the mother's ongoing mental health disabilities and lost earning potential," plus \$50,000 in aggravated damages "due to the overall pattern of coercion and control and the father's clear breach of trust" plus \$50,000 in punitive damages since the father's conduct "calls for strong condemnation."

It is not yet known if the father will appeal the award.

## 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.