

Family

What does a high-conflict separation and divorce look like?

By Cheryl Suann Williams



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(April 12, 2018, 8:43 AM EDT) -- High-conflict separations and divorces represent about 10 per cent of the approximately 70,000 annual divorces in Canada. They often result from one or both of the parties having high-conflict personalities. There are behaviours, both typical and unique, of the high-conflict party and consequences for their conduct that family law lawyers should be aware of.

While Rule 24(1) of the *Family Law Rules* presumes that a successful party is entitled to costs against the unsuccessful party, additional costs may be ordered for unreasonable and bad faith conduct by the successful party or used to decrease cost where the actions were by the successful party.

Pursuant to Rule 24(8), if a party has acted in bad faith, the court shall consider costs on a full recovery basis and order the party to pay them immediately. The court in *Jackson v. Mayerle* 2016 ONSC 1556 defined bad faith as follows:

"In order to come within the meaning of bad faith in subrule 24(8), behaviour must be shown to be carried out with intent to inflict financial or emotional harm on the other party or other persons affected by the behaviour, to conceal information relevant to the issues or to deceive the other party or the court. ... The requisite intent to harm, conceal or deceive does not have to be the person's sole or primary intent, but rather only a significant part of the person's intent. At some point, a party could be found to be acting in bad faith when their litigation conduct has run the costs up so high that they must be taken to know their behaviour is causing the other party major financial harm without justification."

One of the more interesting cases that I have had the opportunity to work on regarding bad faith and unreasonable conduct is *Hockey-Sweeney v. Sweeney* [2002] O.J. No. 3166. This case garnered much media attention, citing Justice Peter Hambly's ruling in headlines such as "Ex-wife used divorce court for 'revenge.'" In my view, the opposing party, the wife, Louise Hockey-Sweeney, is the classic definition of a high-conflict personality.

She had eight lawyers before representing herself at the five-week trial. The statements and allegations made about her former husband Lawrence Sweeney were outlandish and even vile. She made personally derogatory and racist comments about her husband's counsel at the former firm where I worked. Her antics were intentional and severely drove up her husband's legal fees and prevented an amicable resolution.

The trial judge in *Hockey-Sweeney v. Sweeney* ordered that the behaviour of Hockey-Sweeney was "so outrageous that an order of costs against her is required." Hockey-Sweeney then represented herself at the Court of Appeal level in 2004 and again an order for costs was ordered against her despite the fact that she was the recipient of spousal support.

Since then, I have had several cases which successfully led to an order for cost for my clients, including the 2016 case of *Mitchell v. Mitchell* 2016 ONSC 8083 following the 28-day trial, which lasted over three trial sittings. This resulted in an order in *Mitchell v. Mitchell* 2017 ONSC 4659 for the opposing party, the husband, to pay the excessive amount of \$400,000 in legal costs. The

husband then unsuccessfully sought leave at the Court of Appeal in 2017 to dismiss the order for cost in its entirety.

The husband exhibited several behaviours which led to an order for costs. He attempted to mislead the wife and the court by knowingly providing false documentary and oral evidence. This, combined with his refusal to correct the evidence when it was discovered forcing the continuation of the trial in the following sitting, led to a finding of bad faith. Overall, the court noted that "Mr. Mitchell acted unreasonably and in bad faith by concealing his full income in an effort to reduce his obligation for child and spousal support."

This is part four of a series. Read part three [here](#). Read part two [here](#). Read part one [here](#).

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