

# Judge orders estate to pay damages in murder case

BY DALE SMITH

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An Ontario Superior Court judge ordered damages be paid out from the estate of a Brantford, Ont. man who murdered his child and threatened his estranged wife with a knife before being shot dead by police. More significantly, the judge ordered the estate's executor to personally pay court costs when it came to fighting the order for damages.

Lawyers say that the decision in *Craven v Osidacz and Osidacz*, 2017 ONSC 1757 acts as a warning that trustees must treat an estate carefully when it comes to litigating wills.

"[The ruling is] particularly relevant to the issue of a trustee's potential liability for costs on a personal basis," says Michael Jaeger, associate with Boddy Ryerson LLP in Brantford, Ont. who acted as counsel for the plaintiff. "It's been the law of the country for some years that 'the loser pays' principle applies in terms of estate litigation costs. Gone are the days when all the lawyers just feast on the estate."

In the case, Julie Craven sought damages from the estate of her late estranged husband, Andrew Osidacz, after Osidacz stabbed their eight-year-old son



Pam MacEachern says, 'Estate trustees are going to be given a degree of discretion in terms of making decisions.'

Jared to death during one of his custody weekends in 2006, four years after the couple had separated after a domestic assault incident. Later that night, Osidacz forced his way into Craven's home, told her that he killed their son and terrorized her at knifepoint for 45 minutes, at which point he was shot dead by the Brantford Police. During the time that Osidacz was threatening Craven, he telephoned his mother, Elizabeth, who lived two doors down who arrived at the home with two grandchildren, and she did nothing to assist Craven despite pleas for help, telling Craven that she had

pushed Osidacz "too far," and locked the door before the police arrived.

Osidacz's brother, Michael Osidacz, was named trustee in the will, and he and mother Elizabeth were the only beneficiaries, despite the fact that Craven was receiving spousal and child support at the time of the fatal incident. Michael Osidacz began litigating to resist Craven's claims for compensation. The total value of assets of the estate amounted to \$408,912.76, with approximately \$130,000 available at the time of trial.

Craven sought family law damages for the death of her son, as well as general damages, Dependant's Relief damages under Ontario's Succession Law Reform Act and both aggravated and punitive damages for being held at knifepoint. As well, she had claims for arrears of spousal support. The judge ordered \$565,000 in damages in total — more than was available from the estate, and ordered Michael Osidacz to reimburse \$71,277.98 to the estate for litigation costs.

"This is a hard-fought case with horrific circumstances, which is unlike most estate law cases where you're wrangling over the terms of a will or if the person had capacity. This was litigation on the substance of the

issues," says Jaeger. "The trustee decided out of his own volition to fight each of those issues tooth and nail, as found by the judge. The sum total is that the judge ordered a significant repayment of legal costs that he incurred."

Jaeger notes that they had to prevent even further depletion of the estate by the trustee with an injunction.

"It stands as a warning for estate trustees that they'd better get direction from the court before they choose to embark on a path of aggressive litigation, especially as with here, they did without any evidentiary basis," says Jaeger. He noted that they are seeking a generous cost award for the case.

The case is likely to be appealed, notes Rick Simmons, partner with Ross & McBride LLP in Hamilton, Ont. who acted for the defence in this trial but none of the previous actions.

"The litigation ramped up so fast that I think they lost sight of the big picture," says Simmons. "The plaintiff was traumatized, obviously, and it was just as emotional for the executor's family — their brother, son and grandchild were killed."

Simmons says that in hindsight it's easy to find people to blame for why they didn't settle, but with constant litigation, and even with pre-trial, the judges

had plenty of opportunity beforehand to pay out money instead of freezing the estate.

"The estate bar is going to pay attention to it, because to go into your own pocket as an executor is quite unusual. . .," says Simmons. Some estate litigators are cautious about the ruling, saying it could put trustees in an impossible situation.

"How is an estate trustee supposed to know when you're supposed to get approval or when you're just supposed to defend claims in an ordinary court?" asks Miriam Vale Peters, partner with Kelly Manthorp Heaphy PC in Ottawa. "Under what circumstances is an estate trustee supposed to exercise his or her own discretion? It seems a bit far-fetched to me to always have to go to the judge for approval."

Pam MacEachern, partner with Nelligan O'Brien Payne LLP in Ottawa and head of the firm's family law practice group, says the case is unique.

"Estate trustees are going to be given a degree of discretion in terms of making decisions," she says.

"But, where it's a context that clearly tests their ability to do so based on the interests of beneficiaries and creditors, as opposed to their own personal issues, the safest thing is to go to court and ask for direction."