

PUBLIC HUMILIATION

Revenge porn case, new twist

Ontario judge awards woman \$142,000 in lawsuit

CATHERINE PORTER

How much is a lifetime of public humiliation worth?

Ontario Superior Court Justice David Stinson pegged it at precisely \$141,708.03 in January. That's how much he ruled a young man had to pay his ex-girlfriend for the shame and psychological suffering he'd caused her by posting an intimate video of her on pornhub.com.

He called it "college girl pleasures herself for ex-boyfriends delight."

That will give you an idea of its contents.

The decision set a new path for revenge porn victims. Since 2014, when Parliament passed the revenge porn law, victims can go to police and hope the jerk who put their images online without their permission lands in jail. But with Stinson's ruling, they could also pursue some civil justice — cash, and a lot of it. He set the bar high, awarding the young victim the maximum damages — enough to pay her lawyer, and cover therapy bills for years of shame, fear, distrust ...

Stinson lauded the young woman for her bravery in breaking new legal ground. "Her efforts," the final line of his judgment reads, "have established such a precedent that will enable others who endure the same experience to seek similar recourse." He compared her ordeal to that of a sexual assault victim.

Women applauded in their hearts across the country.

Except the victimizer wants a do-over.

This week, the defendant's lawyer Dhiren Chohan was in Superior Court asking for Stinson's ruling to be "put aside." I can't tell you what was said, since the judge put a publication ban on the hearing. But I can tell you what Chohan argued in his factum: his client, known only as N.D., wasn't represented in the hearing because he couldn't afford a lawyer back then and filed his motion improperly, so he didn't know when it was. He has a full-time job now, and has been able to hire counsel, so he'd like the chance to defend himself.

It's a precedent-setting case and "decisions of this magnitude ought not to be made without the participation of all the parties," Chohan's factum states.

How can the court even consider this, seven months after Stinson's ruling? I'll get to that in a minute. First, let me tell you about the case.

The girl, known only as Jane Doe, was 18. She came from a small Ontario city. She had a high school sweetheart. They broke up the summer after Grade 12, but kept a romantic flicker going. She went away to university, and he sent her some "sexually explicit images of himself."

She returned the favour, and sent him a video in November 2011. She found out he'd posted it on the porn website three weeks later, contacted his mother (can you imagine that conversation?) and he pulled the video down.

Then the smart girl lawyered up. She hired Donna Wilson, who sent a letter to her ex demanding \$17,500 in damages. Over the next three and a half years, he negotiated, discussed and stalled. They reached a settlement twice, and he backed off twice. He hired a lawyer and then lost that lawyer. Finally, Wilson sent him notice that she was taking him to court.

He did not file a motion of defence, so his side was not heard by Justice Stinson.

It would appear he blew it. But if he can prove to the court he has a good excuse and an arguable case, then he might just get to "set aside" the ruling and start again.

"Judges are loath to deny defendants the ability to defend themselves," explains civil litigator Gillian Hnativ.

A ruling to reopen the case would clearly be terrible for Jane Doe, who is still a student. This nightmare has dragged on for four and a half years. Another hearing would stir up her victimhood. In his factum, Chohan states he'd like to cross-examine her on whether she "suffered a visible and provable injury." She also hasn't been questioned on the stand on whether she and her ex had an agreement that he wouldn't show the video to anyone else and he therefore breached her confidence, the factum states.

How can she move on and start her life again? The spill-out for the rest of us raises a bigger question. If Stinson's landmark case opened doors to civil litigation, won't setting it aside lock them shut again?

I called three lawyers. They all said even if Stinson's ruling is "put aside," it remains case law for lawyers in the future to draw on.

Tortstar News Service

HEALTH CARE

Tentative deal with doctors not good for Ontario

Tightening of belt will lead to rationing of care, not replacing equipment, clinic closures

CHARLES SHAVER

The recent tentative agreement between the province and Ontario doctors provides for only 2.5 per cent annual increases in the total physician services budget, with additional one-time payments of \$50-120 million per year. With a growing, aging, sicker population and new technologies, the anticipated increase in expenditures will go up by at least 3.1 per cent. There will be two \$80 million reductions in fees. After 2017, these and any overruns beyond 3.1 per cent will be addressed by "co-management" in which MDs are responsible for rising health care costs largely outside their control, and must personally subsidize them.

The net result will be rationing of care for patients.

In addition, the agreement lacks an important safeguard — namely the guarantee of binding arbitration. Police, firefighters, and other essential workers are entitled to this. Justice Emmett Hall recommended it, and it was suggested, but not absolutely mandated, in the Canada Health Act. Despite a rising GDP and the prospect of a balanced provincial budget, Health Minister

Younger, more mobile physicians may, in frustration, leave the province or the country. Many older MDs may retire prematurely.

SURPRISED BY JOY

An anniversary wish to the music in my life

Love and marriage have their own sweet rhythm and it's wonderful to share



THOMAS FROESE

It's a warm and ordinary day, warm and ordinary enough to run around in shorts and bare feet.

The children's mother, your babe, that is your bride, is playing your song. The cats are in front and the dog's in back and the kids are doing homework and nothing much is happening, except this song from the piano in the other room, the piece that makes your blood jump every time.

It's in Uganda, but your bride composed your song while she was still your bride-to-be, living by herself in Yemen. There, you'd also hear it, even as you'd hear it in your first home in Hamilton. And, before that, for the first time, on the day your bride somehow snuck a piano down the 401, stood in her wedding dress, and played it gently for all those guests.

She called it Surprised by Joy.

She's played your song in other places — at a big party in an old Dundas farmhouse; in a chapel at a place called, fittingly enough, Crossroads; at Rideau Hall in Ottawa. Strolling from one Turkish-carpeted room to another, wine-in-hand, you heard, "Excuse me, Mr. Froese? Your wife's waiting for you."

So she was, intelligent eyes and high cheekbones and all, sitting at a fine piano formerly owned by Glenn Gould. Yes, she played Surprised by Joy on that piano in an Order of Canada reception that was, in fact, all about her, not you.

You don't know how you got here, not to your home on the other side of the Atlantic any more than the other side of the moon. It was the vows. That's how you got here, you suppose, with those vows: her hands in yours and yours in hers, those words about love and comfort and honour, in riches and

Don't marry to please anyone else ... Avoid shacking up ... Pray hard. Really. Sure, there are other ways to go about it. But they don't work.



SHARIL DYER, THE CANADIAN PRESS

Health Minister Eric Hoskins forged the tentative deal with doctors but Dr. Charles Shaver says it does not serve Ontario well.

Dr. Eric Hoskins refuses to give it to MDs.

The Ontario Medical Association Charter Challenge to obtain this will take many years. Even if successful, the OMA has agreed that it will not seek or be entitled to damages from previous fee cuts or billing clawbacks. Thus, by the time that binding arbitration was hopefully won, the fee schedule would have been even further eroded.

What would be the impact on physicians and their patients?

Younger, more mobile physicians may, in frustration, leave the province or the country. Many older MDs may retire prematurely. Some physicians may decide not to re-

place outdated, expensive equipment in their offices. Certain clinics may close.

The new agreement does not restore any of the previous fee cuts. These include a 30 per cent reduction in follow-up fees for several medical specialties so as to allow for increased time to treat patients with some 30 chronic diseases, including diabetes mellitus, congestive heart failure, and dementia.

On April 26, 2016, Canadian Medical Association President Dr. Cindy Forbes sent a letter to Federal Health Minister Dr. Jane Philpott. In it, she asked that the Canada Health Act be amended, if necessary, so as to protect physicians from unilateral actions such as have occurred in recent years to those in Ontario. She stated, "it is simply unacceptable that physicians can be left in limbo when governments fail to come to agreement with their provincial or territorial medical association. It is an issue of fundamental fairness."

Sadly, Dr. Philpott has not replied to this most reasonable request.

IFOMA members decide not to ratify the new agreement, matters will indeed fall into limbo. Ottawa must become involved and act quickly for the benefit of physicians and their patients, who will otherwise see a rapid decline in access to health care.

Dr. Philpott should promise to amend the Canada Health Act so as to mandate binding arbitration. The wording was already suggested by the Canadian Medical Association.

Dr. Shaver is an internal medicine specialist from Ottawa.



PHOTO BY THOMAS FROESE

Dr. Jean Chamberlain Froese, wife of columnist Thomas Froese, plays her self-composed Surprised by Joy at an Order of Canada ceremony where she was inducted in 2015. The piano, a 1934 Steinway grand in the Long Room of Ottawa's Rideau Hall, is a former piano of world-renowned Canadian pianist Glenn Gould. Froese and his wife share their July 29 wedding anniversary with Prince Charles and the late Princess Diana.

health and sickness and poverty.

But you didn't know what you were saying. Nobody does. Not really. And before those vows, the choice. It was a choice. It is a choice. Love has to be, even when you feel the wind blow your small boat into the ocean of it.

And before the choice, that first date. You two, just met, went to join common friends at a ball game, only to discover nobody else showed up. You skipped the game, had dinner, saw fireworks, then drove down the midnight highway to where every first date surely desires, to the newsroom of your employer.

And before that? The long preparation. This was when, despite yourself, you somehow learned all that mattered, that no amount of work in any future marriage is worth as much as a wise choice to start.

So don't marry too soon. Or too young. Don't be too eager. Don't marry to please anyone else. Do date enough to learn about others. Be realistic. Don't marry anyone with, you know, behavioural issues. Avoid shacking up. The heartbreaking research shows these are marriage's fault lines. Pray hard. Really.

Sure, there are other ways to go about it. But they don't work.

Remember Charles and Di? Thirty-five years ago today 750 million people watched and cheered their big day. Then? The Hin-

denburg fare'd better.

Twenty years later, July 29, 2001, you'd marry your bride. For the first time, you'd hear your song. It was a strange and unplanned anniversary, a warning if nothing else.

You're now on your fourth wedding ring. The first — gold and diamond and everything — was lost in an Ontario lake; the second, somewhere in Africa; the third, in a hotel. Your 10-year-old bought Number Four for your birthday last summer at a beachside trinket shop. "Dad, you need a new wedding ring," he said.

You now wear that \$12 ring with wonder. And relief that a marriage is more than a ring.

You're not musical yourself. It's one of your gaps. You play only the stereo. But then, one warm day your wife rolls in and steps from the vehicle. You yell through an open house window, "Hey, it's the music of my life!"

It's just another day where the water of ordinary living has been turned into some kind of wine.

So you write about it. You say "Happy Anniversary, Babe," surprised, like her, by the mystery of it all.

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