

Why Marital Conduct Rarely Affects Property Split



Family Matters

by
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Question: A couple has two kids, aged 18 and 14. The wife works two jobs and the husband has not been employed (homemaker) for more than 19 years. After years of pleading with the husband to become employed, the wife has finally had enough and asks for a divorce. The husband has agreed to exchange a sum of money for the wife to retain child custody and the matrimonial home. However, the husband becomes violent one night and physically abuses the wife. Police are called and he is arrested. He has no employment and no money. How will the court look at this situation? The wife's fear is that legal aid may become involved and she may stand to lose half of the value of the wife's assets including the matrimonial home.

Answer: If the parents were not married then under amendments to Ontario's Children's Law Reform Act, a judge must consider violence and abuse when determining the best interests of the child and how that child should be parented, meaning issues of custody and access. This is true even if the violence was against the other parent, not against the child. If the parents were married, no such provisions exist under Canada's Divorce Act, although violent spouses traditionally do not fare as well in custody disputes. So she will likely obtain a sole custody order and his rights to access may be limited given his violent nature, even supervised, until he can show that he would not pose a risk to the children. Unless he can prove that he is truly "unemployable" he may have trouble having a Court make a

spousal support Order if it finds that he is intentionally "underemployed" and the wife is solely responsible for paying for the needs of the children.

However, with respect to the split of the property, including the matrimonial home, your friend has every right to be worried. Unless he gambled away part of the family fortune or did something else to deplete it that was "unconscionable", he could walk away with half of the net worth that she accumulated during the marriage, including the entire value of matrimonial home (even its pre-marital value). There are exceptions to this rule: he has no right to funds that the lady may have inherited *after* the marriage or other property into which those funds were invested, other than the matrimonial home... But generally, the spouse who brings home the bacon (or smoked salmon) cannot usually plead that her spouse has been a bum and for that reason alone, he shouldn't get half of what accumulated over the course of the marriage. The reason? Well the law was originally designed to help stay-at-home moms who raised the kids for 30 years while hubby enhanced his career and worked while she cleaned the toilets. Such a woman may have scarified her own career prospects and ability to accumulate her own wealth. So when hubby then takes up with his dental assistant the law gives her half of the value of the increase of everything that her husband accumulated during the course of the marriage. However, because of our Charter of Rights, one cannot write laws that favour only one sex so it simply gives both sexes a 50:50 shot at marital wealth accumulation, with very few exceptions to the rule. So that bum may have to find a job to pay child support but there's a good chance he's walking away with a lot of money for doing very little.

Righteous Gentile honoured for 'heroic act'

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He saved more than 5,000 Jews – about four times as many as Oskar Schindler – from almost certain death during the Holocaust, but it was not until four decades passed that his heroic story emerged.

The remarkable story of the late Giorgio Perlasca, an Italian trader who pretended to be a Spanish diplomat to save 5,200 Hungarian Jews from the Nazis, brought hundreds of members of Toronto's Jewish and Italian communities to Beth Torah Congregation on Nov. 3 for a Holocaust Education Week event in Perlasca's honour.

In addition to brief addresses by Italy's ambassador to Canada Gian Lorenzo Corrado, Hungarian consul general in Toronto Stephania Szabo, and Beth Torah Rabbi Yossi Sapirman, and a keynote address by Perlasca's son, Franco, the program included a screening of a documentary that featured interviews with Perlasca prior to his death in 1992, as well as with two Hungarian Jewish Holocaust survivors who owe their lives to the Italian hero.

The film explains how Perlasca's role with the Italian military during World War II brought him to Budapest.

When Perlasca was imprisoned because he refused to join Italian leader Benito Mussolini's republic, he managed to escape and find refuge at the Spanish Embassy in Budapest.

He was granted Spanish citizenship because he held a letter of protection from General Francisco Franco, in recognition of Perlasca's service in the Spanish Civil War.

When Perlasca witnessed Hungarian Jews being rounded up into cattle cars to be transported to Auschwitz, he felt compelled to do anything in his power to save them from the death camp.

Using Spanish diplomatic letterhead, Perlasca forged documents that named him a Spanish ambassador and he began issuing "safe conduct" documents under Spanish law to provide safe houses for hundreds of Jews, protecting them from the Nazis.

Perhaps the most moving moment of the evening came when Mary Siklos, the Sarah and Chaim Neuberger Holocaust Education Centre operations manager, introduced Perlasca's son, Franco, to speak on behalf of his late father.

"As we saw in the film, Franco's father risked his own life to save the lives of hundreds and hundreds of innocent Jewish people in Hungary. One of those Jews was my mother," Siklos said, adding that the two Jewish women who were interviewed in the documentary about being saved by Perlasca were her mother and aunt.



Franco Perlasca

She said Perlasca, who has been named Righteous Among the Nations by Israel and has a 10,000-tree forest in the Galilee that was planted in his name, saved two more of her aunts, her grandmother, her great-grandmother, as well as other members of her family.

"I wouldn't be standing here if it was not for Giorgio's incredible, heroic act," she said.

Franco, who established the Giorgio Perlasca Foundation to honour and celebrate his father's legacy, shared, through a translator, his father's story.

He said one of his most vivid memories happened in the late 1980s, when one of the women he saved tracked him down in Italy to thank him for saving her life.

"When she wanted, at one point, to give my father three objects – the only three objects that had remained from their family during the war – my father didn't want to accept them. He said, 'keep them and give them to your children and grandchildren in memory of your family.' She said – and I'll never forget this – 'Mr. Perlasca, you must keep them, because without you, we wouldn't have any children or grandchildren.'"

"He did accept them. It was a teaspoon, a pendant and a coffee cup, and we still keep them with great love and care because we know the blood, the pain and the suffering that they represent."

In spite of his heroism and sacrifice, Franco said his father, and others like him, shouldn't be regarded as saints.

"They are normal people with their flaws, but they are people who, at the right time, feel their conscience intervening. They tell themselves that they cannot be indifferent, they cannot turn the other way and they have to do something. They have to act. They teach us that you can fight evil with good gestures and you can help people who are persecuted with a simple gesture, as long as you have the moral impetus to do it," he said. ■

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