

Devastated by divorce court

January is traditionally the busiest month for people to file for divorce in Canada. But many lawyers are reporting a significant drop in calls post-Christmas and see it as a signal that the economic meltdown may be keeping more couples together.



By [Susan Pigg](#) Reporter

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At 51, Wayne Tippett must live with his parents and has only two possessions: a 10-year-old car and a cemetery headstone. (Jan. 22, 2009) KEITH BEATY/TORONTO STAR

Wayne Tippett has just two things of any real value left in his life: a 10-year-old car and a granite tombstone.

At 51, Tippett is broken, bankrupt and bunking in the guest room of his parents' Burlington home after a divorce settlement that's left him \$75,000 in debt and racking up \$1,000 more each month.

Today, he'll appear in court at a default hearing to try to explain why he can't afford to pay his ex-wife (the couple had no children) \$3,300 a month, \$16,000 in retroactive alimony and \$42,000 of her court costs out of a complex case he himself still doesn't understand.

Even his ex-wife's lawyer calls the situation "a total tragedy." And while he says Tippett "is paying for his own foolishness and stubbornness," the settlement is, in many ways, a frightening

example of bad timing, lack of adequate information, and a divorce court system that can be deadly unpredictable.

"You're absolutely insane if you want to go into the (divorce) court system," says London, Ont., family law lawyer Peter Eberlie, who represented Tippet's ex-wife Darlene Cormier, also 51. "Any court case is Russian roulette."

A detailed *Star* examination of court transcripts, as well as interviews with both parties' lawyers and some of Canada's leading divorce lawyers, shows why family law lawyers have been pressing the Ontario government to devote more court resources "up front" to pre-trial case and settlement conferences aimed at helping warring couples reach a fair settlement quickly and without the ruinous legal fees of a lengthy court battle.

"I think most family law lawyers now regard going to court as a failure, of both them and their clients. A failure to be reasonable," says Philip Epstein, one of Canada's most respected divorce lawyers.

Cormier refuses to discuss the case, other than to say she's "struggling for survival," and didn't expect to have to hire a lawyer and revisit an agreement on alimony payments the high school sweethearts had reached in 2003 – almost two years after their separation and 26 years together.

Every day that Tippet, a highly specialized Xerox technician, wakes up in the spare room he shares with three Cabbage Patch dolls and a teddy bear Mountie, he is falling further into a black hole. Since last April, he has been on disability leave because of medical problems he says have been brought on by the stress of the case, which means his \$90,000 a year in salary and commissions is now significantly less. While Cormier is now getting just over \$2,000 a month of his disability pay, technically Tippet is on the hook for \$3,300, so each month his arrears are climbing.

"I've been given a life sentence and she's been given a cash for life ticket," says Tippet. "I actually asked my lawyer at one point, 'Isn't there a human rights issue here? Don't I have the human right to have a life after divorce?'"

In a desperate act to protect what little he says he has left, Tippet admits that he disregarded a judge's order to make his ex-wife the beneficiary on an old insurance policy and used the \$11,000 to pre-arrange his own funeral, buy a family headstone and have his name etched on it.

"Darlene won't bury me, and I don't want my family to have to pay for that. But I'm afraid the FRO (Family Responsibility Office) will seize the stone."

In fact, things might have turned out much differently had Tippet known that family law had undergone some dramatic changes in the time since his separation. Had anyone simply pointed him to familylawcentre.com where he could do the math himself, Tippet might have realized he was at serious risk the minute he stepped into court.

Cormier and Tippet met in Grade 8 math class and by 16 had fallen love. They both quit school in Grade 10, although Tippet would later get a college diploma at night, and married in 1981. She was the love of his life.

"I believe in marriage," he says, breaking down recalling how soothing it was to come home at night to hear the sound of Cormier's flute wafting out the window of their home.

"I took my wedding vows word for word – till death do you part. I thought I'd take my last breath looking into her eyes."

Cormier's lawyer maintains Tippet was controlling and content to have his wife dabble at home-based craft and music businesses that never earned much money. Tippet disagrees, saying he offered to help put her through school, pay for her to go overseas to study music, in hopes she could start earning a living.

None of that really matters now. Under Canada's "no fault" divorce system it's irrelevant who fell out of love first, or that Tippet voluntarily offered to move out and pay Cormier \$2,145 a month to cover the mortgage and other expenses until they could work out a formal agreement. By November 2003, they had a deal for splitting assets and \$2,300 a month in support, to be reviewed in three years.

Cormier would eventually buy a three-bedroom home kitty-corner to the matrimonial home and Tippet, with little left by the time debts were paid, rented rooms in hopes that the support would be reduced to, say, \$1,400, in three years.

"We were 42 when we separated. I thought by 45 I would be starting all over again, that I'd be able to get a little condo, that she'd be on her feet," says Tippet. "I had no intention of leaving her high and dry. I knew I would always have to support her in some way."

Tippet kept writing cheques for \$2,300, but the couple failed at every attempt to reach a deal. He says he was "shocked" last January to find himself in the middle of a two-day trial, with his ex-wife citing a litany of health issues – from fibromyalgia to the circulatory problem Reynauds syndrome – that, her doctor testified, made it impossible for her to work full-time. Even her 22-hour a week job at an antique market was proving to be a hardship, Cormier testified, acknowledging that she took a quarter to a half an Advil a few times a week to deal with chronic pain.

What Tippet didn't realize is that since the couple's 2003 agreement, a revolutionary set of "spousal support guidelines," along with significant new case law, was now firmly taking hold in divorce settlements.

The guidelines – one aimed at childless couples, the other for those with children – were meant to bring some consistency and predictability to divorcing spouses, especially women emerging from "traditional" long-term relationships who were unlikely to find decent-paying jobs after years at home.

In fact, the guidelines added up to a sort of "65 rule" – that if the partner's age and years in the relationship equalled 65 or more, the main breadwinner would be paying "permanent support" the rest of his or her life.

"The view now about marriage is that (both) parties are entitled, to the extent possible, to enjoy the same lifestyle after a long-term marriage," says Epstein, who sat on the committee that took five years to draft the guidelines. "We operate on a system that, if you create economic

dependency (even if the wife isn't tied to the home caring for children), then you're going to have to redress it."

At the same time, judges were being much more aggressive in not just reviewing "time-limited" settlements but, in essence, going back to square one – looking at income, past support and setting new payments, as happened in Tippet's case.

In fact, during last January's court case, Cormier's lawyer accused Tippet of getting "one heck of a deal" compared to the new guidelines. Ontario Superior Court Justice Grant Campbell clearly agreed, not only boosting Tippet's alimony payments by \$1,000 a month in his ruling last March, but making them retroactive to November 2006 and ordering him to pay Cormier's \$42,000 court costs.

Facing massive legal bills of his own, Tippet filed for bankruptcy and it was only later, he says, he discovered he's still on the hook, under bankruptcy laws, for any payments related to the divorce case.

That's left Tippet in arrears that are growing monthly, on the default list of Ontario's controversial Family Responsibility Office and facing seizure of his driver's licence, his passport and, in time, a possible jail sentence.

Tippet says he knew "the whole world had flipped" the minute he left the courtroom last January.

"I was suicidal when I realized that I was going to lose. All I could see was black. I went home to my room and I cleaned things up. I was going to kill myself. No one knew what I was going through," says Tippet.

Except his mother, who could see it on his face.

"Sometimes I still worry when he's driving," she says now. "Wayne just spoiled Darlene to death, he loved her so much. Now it's ruined his life."

Even Tippet's Toronto lawyer, John Freeman, has been stunned at the turn of events.

"It's always easy to say, 'This is what the law is,' but up until that time (the January alimony review) the law wasn't quite so clear. The spousal support guidelines did not exist when the original (2003) agreement was drawn up so, to a certain extent, Wayne is being pilloried retroactively.

"I can't say that Wayne's expectations (of a reduction in alimony) were unrealistic," says Freeman. "I thought he had a very good shot at reducing the amount. I didn't see an increase was going to be coming, to be very frank. Was it possible? Yes, but I didn't think that was a likely outcome."