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Loretta is one of the few lawyers in Ontario who has substantial experience in dealing with abuse and harassment in civil lawsuits and employment cases. She understands and cares about abuse survivors, recognizing that coming forward, being heard and acknowledged as well as gaining a sense of justice and closure, in addition to the amount of a settlement, are what matter to her clients.

## Relationship Lies

Can you sue a romantic partner for deceiving you? In two recent cases Canadian courts considered this issue. In the first case, the lie was about the use of birth control and in the second case the lie was about being chaste.

In *P.(P.) v. D.(D.)*, 2016 ONSC 258 Justice Perell had to consider whether a man can sue when a woman deceives him about using birth control and then gets pregnant. The man said that his consent to the sexual activity was vitiated by deceit and also sued for damages for fraudulent misrepresentation. The man claimed he was emotionally harmed because he was deprived of the chance to fall in love, marry, enjoy married life, and when he and his wife thought that ‘the time was right’, have a baby. The woman brought a motion to the court to strike out the claim on the basis that it could never succeed. The court agreed.

Both parties were medical doctors. The man was 42 years of age and the woman was 37 years old. They had been dating and had consensual sexual intercourse. The man claimed that prior to doing so, the woman

told him she was “on the pill”. He argued that this statement implied that she was taking birth control pills as prescribed and intended to avoid pregnancy. They continued to date and have sexual relations for a few months. Eventually the woman became pregnant and ultimately gave birth to a healthy child. The man and the woman dealt with the issues relating to custody, access and child support in a separate *Family Law Act* case.

In the claim for fraudulent misrepresentation the man claimed compensation for the emotional harm of the unplanned fatherhood. The court found that the fraudulent misrepresentation claim could not succeed. The court said fraudulent misrepresentation is typically classified as an “economic” or “pecuniary loss tort”. In this case, there was no financial loss except for the child support payments which the man agreed he was not seeking to avoid.

The court stated that the tort of fraudulent misrepresentation should not be applied in family law conflicts of this nature. It was clear that the

man was only suing for fraudulent misrepresentation because he had “non-pathological emotional shock from becoming a parent”. The court also noted that the civil lawsuit for fraudulent misrepresentation had the potential of adversely affecting the relationship between parent and child and the potential to be used maliciously. Accordingly, the court ordered that pseudonyms be used to prevent the identification of the parents and sealing of the court file to protect the child.

The court also discussed the tort of sexual battery which occurs when there is no consent to sexual activity. The court stated that consent must be “meaningful, voluntary and genuine”. The Plaintiff must have legal capacity to consent. Consent must not be given under the influence of drugs or alcohol. Consent must not be obtained by force, threats of force or the exploitation of a position of power over the Plaintiff that overcomes his or her free will.

The court acknowledged that consent may be vitiated by fraud or deceit in obtaining consent. However, the court said that not all frauds will vitiate consent. In this case, the woman lying about whether she was on the pill or whether she was competent in the use of the contraceptive is not the type of lie that should give rise to criminal or civil legal responsibility. On the other hand, lies that expose the victim to significant risk of serious bodily harm

(e.g. a lie about HIV status) would count as frauds vitiating consent to sexual activity.

The man was not physically injured and his emotional injuries did not involve a recognizable psychiatric illness such as clinical depression or post-traumatic stress disorder. The injury he claimed was the type of damages for which tort law does not normally offer compensation.

In *Sharma v. Raval*, [2016] A.J. No. 755 Justice Hunt McDonald of the Alberta Court of Queen’s Bench had to decide whether it was a fraudulent misrepresentation when a woman who had been previously married with children lied and said that she was chaste before entering into her marriage. The husband sued for damages for fraudulent misrepresentation, assault and battery, return of jewellery, reimbursement for wedding expenses, costs and punitive damages. He said he came from a traditional Hindu family and would never have married his wife had he known she had been previously married. He sued his wife and her ex-husband, her brother-in-law and cousin.

The parties met because the husband hosted a radio show and the wife became a frequent caller. They fell in love, met several times and she proposed to him. She was living with her ex-husband, brother-in-law and cousin. She lied about her ex-husband being her brother and lied

that her children were the children of her brother.

The parties married in India. The husband said the wife disappeared after the wedding and claimed she had been kidnapped. He then learned about her prior marriage from the police. The husband said that the disappearance had been planned. The wife said she divorced her ex-husband just before marrying the new husband and that he knew all about her marriage and children. She said that the husband and his family would not allow her to leave the house in India and were emotionally abusive, so she ran away. She denied receiving any jewellery other than a wedding necklace and ring as gifts and said she was slapped and had the necklace taken away after she returned from running away. She claimed the husband and his family started stalking her.

The Court dismissed the lawsuit. The Court said that generally allegations of fraudulent misrepresentation inducing marriage could only stand if the validity of the marriage itself was affected. In this case, both parties intended to marry each other and testified they were in love, and in fact remained married and had not filed for divorce. The Court said that even if the husband could prove the wife and other parties misrepresented that she had never been married there was no legal basis to sue. The Courts have repeatedly said that the discovery that a bride was less than chaste cannot amount to a lawsuit

in deceit. The Court said there were strong public policy reasons for not allowing this type of claim as it was impossible to fairly assess how a decision to marry is made. The Court was concerned that allowing such claims would open the flood gates to numerous lawsuits based on things said during courtship.

This case was appealed to the Ontario Court of Appeal which dismissed the appeal upholding the trial judge's decision. The Court of Appeal said that the aggrieved father could not recover damages from the mother for involuntary parenthood. To allow recovery would run against the clear trend in the law moving away from fault-based claims in the family law context. The Court said it would be contrary to the spirit, purpose and policy reflected in Ontario's no-fault child support regime to view parents as equally responsible for maintaining a child but, at the

same time, to allow the father to recover for the loss suffered by him as a result of that responsibility. The Court also said that in the absence of recoverable damages, the claim for fraudulent misrepresentation could not succeed. Finally, the Court said that the mother's misrepresentation about taking birth control did not vitiate the father's consent for the purposes of a sexual battery claim as the deceit did not go to the nature and quality of the act.

The moral of the story is that relationships involve a certain degree of risk taking. People should be honest with each other when they are involved in intimate relationships, but it is well known that this is often not the case. People often lie; however, not all morally reprehensible or disgraceful conduct can give rise to damages in a lawsuit.