

Civil Liability for STDs and Jurisdiction

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On 4 October 2016, Toronto Blue Jays first baseman Edwin Encarnacion hit a dramatic three-run homerun to lift his team past the Baltimore Orioles in their one-game Major League Baseball knockout Wild Card game. With the victory the Blue Jays advanced in the World Series play-offs.

Encarnacion has had a great season and is one of baseball's premier players. In the 2016 regular season, he hit 42 homeruns and drove in 127 runs. The 127 runs driven in tied him for first place in the American League in this category.

However, a few months ago he was sued in New York for allegedly knowingly transferring STDs to a woman during a weekend romance in the Dominican Republic. Encarnacion has vehemently denied the allegations and through agents have said they are meritless and frivolous. The woman's claim has yet to be proven in court.

The claim raises two interesting legal issues as described below.

The first issue is whether an individual can be held civilly liable for knowingly transferring an STD to a partner. Although in Canada there is a dearth of case law on point, it is strongly arguable that notwithstanding a person's consent to sexual relations, the individual transferring the STD to his or her partner can be civilly liable in circumstances where the transferor knows of being infected and withholds such information from the partner, and damages result.

In the criminal context, courts, including the Supreme Court of Canada, have held that an accused's failure to disclose an STD amounts to fraud vitiating consent, particularly in circumstances when there is a "realistic possibility" of STD transmission. The leading criminal cases in Canada are *R. v. Mablor* and *R. v. D.C.*

On the civil side, cases such as *M.F. v. J.S.* and *Bell-Ginsburg v. Ginsburg* have theoretically commented that failure to disclose an STD to a sexual partner might result in liability for negligence or battery.

The second interesting issue is whether the New York courts have jurisdiction to hear the case. Given that the alleged sexual encounters occurred in the Dominican Republic it is arguable that New York is not the proper forum in which to hear the civil case. Under Canadian law, it is well-established that the most appropriate forum in which to hear a case involving a tort is, in general, the jurisdiction in which the tort took place. The law where the tort occurred would also govern.

While Toronto Blue Jays baseball fans will be solely concerned with rooting for their team and want them to win the on-field baseball battles that lie ahead, those of us who are both baseball fans and legal scholars will continue to follow Encarnacion's court room battle as well.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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