

# THE GR COURT DOCKET

October 31, 2017

## An Online Date to Forget

By Stephen Thiele

The modern era has given those seeking love and romance more tools to find the right partner. Online dating sites are thriving with people hoping to find their perfect “match”.

However, the world of online dating is not free from the chances of vulnerable romance-seekers suffering new heartbreaks as a result of fraud. A simple introductory “Hello” typed in an email’s subject-line and sent to a complete stranger over the internet can lead to devastating emotional and financial consequences.

Indeed, the recent case of *Larizza v. The Royal Bank of Canada*, 2017 ONSC 6140, serves as a warning for anyone who uses online dating to fulfill their romantic needs.

### The Facts

In this case, Antoinette Larizza, a 54-year-old divorced mother of two adult children entered the world of online dating.

On February 23, 2012 she met Albert Rosenberg online and a few days later met with him in-person.

When the pair physically met, Albert told Antoinette that he was the 56-year-old heir to the Ovaltine empire and that he was a wealthy Swiss-Canadian businessman.

By July of 2012, Albert urged Antoinette to sell her house, quit her \$110,000 a year job and move in with him at his Yorkville Avenue penthouse. The penthouse had been leased under an agreement with Antoinette as the tenant and Albert as occupant after Albert’s credit check information made the landlord uncomfortable that Albert should be the “tenant” under the lease. The credit check came back showing “insufficient” credit information for Albert.

While Antoinette signed the tenancy agreement, she thought Albert was the tenant.

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A number of our lawyers have enjoyed in-house corporate positions and been appointed as board members of tribunals or as judges.

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In September 2012, Antoinette was referred to Fasken Martineau DuMoulin LLP (“Faskens”) for legal advice in connection with a pending marriage to Albert, estate planning and a trust fund.

The referral was made from another law firm who Antoinette understood acted for Albert.

Meanwhile, Antoinette had given large sums of money to Albert, including \$5,000 from her savings account and \$150,000 from the sale of her home.

In October 2012, she gave Albert \$75,000 more.

Albert either told Antoinette that he needed to borrow the money because his own money was tied up abroad or that he would invest the money for her.

In the summer of 2013, Antoinette grew concerned about financial issues. She confronted Albert, who then assaulted her. Albert was arrested whereupon it was discovered that he was a serial fraudster.

Eventually the rent for the penthouse fell into arrears and the landlord commenced an Application before the Landlord and Tenant Board. In turn, Antoinette commenced a civil action against various parties, including the landlord and Faskens.

### **Antoinette’s claim**

The action against Faskens alleged liability for negligence, negligent misrepresentation, breach of contract and breach of fiduciary duty.

Before getting married to Albert, Antoinette had been referred by his lawyers to Faskens to ensure that she received independent representation for a pre-nuptial agreement that Albert was purportedly preparing through Swiss lawyers, for estate planning and for a trust fund.

At the initial meeting with a Faskens lawyer, Antoinette advised of her planned marriage to Albert and that he had planned to buy a \$10 million insurance policy, naming Antoinette as the beneficiary for a trust that would benefit both Antoinette and her two daughters.

The Faskens lawyer then wrote to the referring lawyer to explain that Faskens had been retained by Antoinette to provide estate planning advice, to provide advice in relation to the proposed trust and to prepare separate power of attorneys for property and personal care naming Albert as Antoinette’s attorney and one of her daughters as the alternate attorney.

Despite making efforts to get instructions and complete the work that they had been retained to do, none of the tasks were completed because Faskens never received a response from their inquiries, particularly about the proposed wedding date.

Legal bills sent to Antoinette were also not paid.

However, when Faskens learned that Antoinette had been a victim of fraud, the accounts were written off.

The claim against the landlord, among other things, sought damages for the new tort of intrusion upon seclusion.



During the application process for renting the penthouse, the landlord had conducted a credit check of Antoinette without any prior authorization.

In support of this claim, Antoinette relied on the landlord's own policy which precluded credit checks without consent, the *Credit Reporting Act* (the "CRA") and *Personal Information Protection and Electronic Documents Act* ("PIPEDA").

### **Claims against landlord dismissed**

While the court found that the CRA had not been breached by the landlord, it concluded that PIPEDA had been contravened.

But the statutory breach did not lead to a finding of liability because the information obtained by the landlord was authorized by the CRA.

Also, the information contained in the report was found not to constitute an invasion into Antoinette's personal affairs.

In any event, the court further ruled that the third element of the intrusion upon seclusion tort was not satisfied since the circumstances under which the credit check was conducted would not be considered by the reasonable person as highly offensive, causing humiliation or anguish.

Justice Favreau explained that the credit report had been obtained to determine whether to rent the penthouse to Antoinette and Albert, not for an improper or nefarious purpose.

All other claims against the landlord were dismissed as well, as were the claims against Antoinette's lawyers.

### **Claims against lawyers dismissed**

With respect to the claims against Faskens, Antoinette's primary complaint was that they failed to discover that Albert was a serial fraudster.

Antoinette contended that Faskens should have conducted searches with respect to Albert that would have led to such a revelation.

Also, Antoinette contended that Faskens failed to refer her to a family lawyer as promised and that if this promise had been kept the family law lawyer would have been able to take the necessary steps to protect her interests.

On the contrary, Faskens denied that they had any obligation to conduct any searches to ascertain Albert's identity and that matters never reached a point where it was necessary for Antoinette to be referred to a family law lawyer in connection with a review of the purported pre-nuptial agreement that never materialized.

Also, Faskens denied that their role was to investigate Antoinette's motivations on Albert's behalf, which she alleged involved ensuring that she was not a "gold digger". Antoinette argued that by reviewing her motivations to marry Albert, Faskens was purportedly acting for him

### **No negligence**

With respect to the negligence claim against Faskens, the court determined that their conduct did not fall below their required standard of care to Antoinette or that they caused Antoinette's damages.

Justice Favreau explained that it defied common sense that Faskens was required to conduct

an investigation into Albert's background and identity as a matter of course. Indeed, it was found that Faskens would have been prevented from undertaking any credit, criminal or other background check of Albert without his consent because to do so would be contrary to the CRA and PIPEDA.

In any event, it was evident that Faskens' failure to do so was not the cause of Antoinette's damages because by the time Faskens had been retained, Antoinette had quit her job, sold her house, moved in with Albert and given him over \$150,000.

### **No negligent misrepresentation**

The claim for negligent misrepresentation against Faskens was dismissed as well because Antoinette failed to submit any evidence of untrue, inaccurate or misleading statements by their lawyers to her.

There was, in particular, no evidence that Faskens lawyers said anything to Antoinette about Albert's reputation or ever represented that they would act for Antoinette on the family law aspects of her matter.

As such, Antoinette was unable to meet the second element of the tort of negligent misrepresentation.

### **No breach of contract**

The claim against Faskens for breach of contract was dismissed because Antoinette never asserted that it was an explicit term of the contract that they would conduct a background check on Albert and there was no evidence to support such an assertion.

The court also ruled that such a term could not be implied into Faskens' retainer.

### **No breach of fiduciary duty**

Lastly with respect to breach of fiduciary duty, the court noted that the fiduciary duty imposed on a lawyer includes the obligation to provide full disclosure to clients, to act with undivided loyalty and to maintain the client's affairs in confidence.

Justice Favreau also noted that a distinction exists between the improper provision of legal advice and services, which may give rise to a claim in negligence, and circumstances where a lawyer has breached a fiduciary duty such as where a conflict of interest arises.

Here, the only aspect of Antoinette's claim that might have engaged fiduciary duty issues was her allegation that Faskens had been retained to determine if she was a "gold digger".

But Antoinette's comments about this issue were simply speculative.

No evidence existed to support the allegation that the referral to Faskens was meant to be for the benefit of Albert.

In any event, no damages would flow to Antoinette from her claim that Faskens was "vetting" her because even if their loyalty was divided, Justice Favreau concluded that Faskens had no obligation to do a background check on Albert.

### **Gardiner Roberts representation**

In this case, Gavin J. Tighe, partner and certified specialist in civil litigation, and Scott Gfeller,



senior litigation associate, successfully represented Faskens on their summary judgment motion.

Stephen Thiele is a partner and is the Director of Legal Research for Gardiner Roberts LLP.

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