

Witnesses intimidated and conspiracy alleged while trying to conceal marriage

Divorce Act | Foreign Buyer's Tax | Fraud | Litigation | Litigation & Dispute Resolution | Property Transfer Tax Act

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Allegations of fraud and other unlawful conduct such as conspiracy are an attack on a person's integrity and should not be made lightly by litigants. As the mere making of such allegations in a public court proceeding can create a stain on a person's reputation that is difficult to remove, the courts may impose substantial costs as a consequence if the allegations are unproven. Further, raising and failing to prove unlawful conduct by another party may have the effect of undermining the credibility of one's own position.

On its face, *Sonia v. Ratan*, 2022 ONSC 3690 (CanLII), concerned a straightforward question: did the applicant marry a third party in Bangladesh in May 2020? Conversely, the events leading up to and occurring during the court's determination of that question were anything but straightforward. The case involved broad allegations of fraudulent misconduct against a host of parties and required the court to address the applicant's attempt to intimidate witnesses.

In January 2020, the applicant wife commenced an application seeking a divorce and corollary relief from the respondent husband, including a claim for spousal support as well as for equalization of the parties' net family properties. In response, the husband disputed the applicant's claims on various grounds, including that the parties had already obtained a divorce in Bangladesh in 2017.

The applicant then claimed that the 2017 divorce had been obtained by fraud and that the divorce documents filed by the respondent, including a Bangladeshi Divorce Certificate, were fraudulent. The applicant further argued that, even if the divorce had not been obtained by fraud, it was not valid under Bangladeshi law since the respondent had not followed the correct procedure. Therefore, she argued, any such divorce should not be recognized in Canada.

The respondent denied that he had committed fraud. He obtained a detailed affidavit from a Registrar in Bangladesh stating, *inter alia*, that the Divorce Certificate had in fact been duly signed and issued.

During a preliminary hearing, the parties agreed that the Bangladeshi divorce would be recognized as valid only for purposes of Bangladeshi law, but that it would not be recognized in Canada on grounds of public policy. This meant that, notwithstanding the divorce, the parties would be considered to be married for the purposes of Canadian and Ontario law, and the applicant could pursue her family law claims. The court then issued orders confirming the parties' agreement and a divorce under Ontario law.

However, before the applicant's Ontario family law claims could be addressed, the respondent raised a fresh concern, namely, that he had recently learned that the applicant had married another party ("Towfique") in Bangladesh in April 2020. In support of this revelatory claim, the respondent filed an affidavit from a witness who stated that he had attended the wedding ceremony in Dhaka on 24 April 2020.

Towfique sadly passed away from complications due to Covid-19 in May 2021, and was not available to confirm whether or not he had married the applicant.

Since Canadian law prohibits a person who is legally married to one person from marrying a second person, the applicant could not be validly married to both Towfique and the respondent at the same time. Therefore, if the applicant married Towfique, the court reasoned that she must have been divorced from the respondent as of that date, both under Canadian and Bangladeshi law (which the judge noted allows a wife to have only one husband while a man may have up to four wives). The Ontario divorce order would therefore need to be revised or set aside.

In June 2022, the court held a further hearing to address the question of whether the applicant had indeed married Towfique.

The respondent filed over 2000 pages in support of his assertion that the applicant married Towfique, including (i) affidavits from six individuals who said they either attended the wedding or had direct knowledge of it, including a religious scholar who performed the wedding; (ii) hospital records from a hospital in Dhaka, where Towfique was admitted due to Covid-19, which stated that the applicant was Towfique's wife; (iii) handwritten letters between Towfique and the applicant, in which Towfique addressed her "My Loving Wife" and ending with "Your Husband Towfique"; and (iv) social media accounts showing the applicant using Towfique's name. Further, there was evidence from media reports published in the major daily newspapers as well as TV Channels in February 2022 which described the applicant as Towfique's wife.

Despite this, the applicant denied having married Towfique. She claimed that the witness who said he attended at her wedding to Towfique did not exist, that his purported affidavit had been fraudulently manufactured by the respondent, or, if the witness did exist, then he was lying. She claimed that the respondent's affidavits were forgeries or else the affiants were engaged in a conspiracy to defraud her of her rightful claims and deliberately misled the court. She alleged that the hospital records were fraudulent, that the handwritten letters did not establish that she and Towfique were actually married, and while she admitted purchasing a man's diamond wedding band, she claimed that she did so for a friend who reimbursed her.

The application judge ordered that the respondent's six affiants appear for questioning before the court via Zoom. Before this questioning could take place, however, all six affiants advised that they had been threatened with dire consequences if they testified in accordance with the court order. As a result of these threats, two of the affiants refused to testify. The other four said that, although they felt severely threatened, they were nonetheless prepared to testify, as they believed it was important that the court know the true facts regarding the alleged wedding.

The applicant (through her counsel) was dismissive of the allegations that the affiants had been threatened and claimed that these allegations had also been concocted by the respondent to prevent the questioning from taking place.

Following the affiants' questioning, the court held that it was absolutely clear that they were threatened in an effort to prevent them from testifying. The court drew no adverse inference from the fact that the remaining two affiants were not prepared to testify as a result of these threats, and accepted their evidence as set out in their affidavits.

The court rejected the applicant's fraudulent conspiracy claim. While the affiants' recollections were sometimes uncertain, the application judge noted that they were crystal clear in their assertion that they had in fact attended the alleged wedding. Further, evidence was obtained directly from the hospital manager to disprove any fraud. The applicant's conspiracy theory was, in the court's view, constructed on a house of cards using sinister inferences drawn from minor inconsistencies and unexplained facts, but which collapsed in the face of logic and common sense.

The court likened the applicant's strategy to that of the plaintiffs in a recent decision of the Commercial Court in the UK, whereby "the desire to allege fraud/dishonest/conspiracy becomes a kind of philosopher's stone which transforms innocent errors into dishonest conspiracies – from which in turn the main conspiracy can itself be inferred" (para. 97). As was pointed out in that case, it is simply not appropriate to "jumble together a vast array of different, apparently trivial or marginally suspicious facts relating to different matters and turn them into a valid pleading of fraud."

The court therefore concluded that the applicant had married Towfique in Bangladesh in 2020. The court found that the applicant had deliberately attempted to conceal the marriage by making numerous allegations of fraud against the respondent. A further hearing will be required to determine the consequences of the applicant's concealed marriage.

On a parting note, the application judge commented on the intimidation of the witnesses, noting that the rule of law depends on guarding and nurturing public trust in the lawful exercise of public authority, and the belief that when disputes arise, they will be settled through lawful means and decisions of the courts:

The fact that these efforts at witness intimidation very nearly succeeded is no doubt as much of a concern to Bangladesh as it is to Canada, since both societies are equally committed to the resolution of disputes through law. This court stands ready to assist the relevant administration of justice authorities in either jurisdiction who may wish to conduct the appropriate investigations. The outcome of any investigations resulting from these events remains to be seen.

Addendum - 2017 divorce enforced by Ontario Court*



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In December 2022, the court rendered a decision recognizing the 2017 divorce as valid under Canadian law, including for purposes of the *Divorce Act* and the *Family Law Act*. Because the 2017 Divorce became effective more than two years prior to the commencement of the application in January 2020, and the applicant had not pleaded or sought any extension in the limitation period in the *Family Law Act*, the applicant's claim for equalization of the parties' net family property was statute-barred by section 7(3) of the *Family Law Act*. As a result, the court denied the applicant's claims for spousal support and equalization.

Appeal Dismissed February 2024

The Court of Appeal for Ontario subsequently dismissed an appeal, finding that the motion judge did not err in setting aside the Consent Orders and that the Bangladesh divorce was a foreign divorce pursuant to the laws of Bangladesh, to which the applicant had a real and substantial connection, and should be recognized in Canada under section 22 of the *Divorce Act*: *Sonia v. Ratan*, 2024 ONCA 152 (CanLII).

The Court of Appeal recognized, however, that the effect of recognition of the Bangladesh divorce in Canada, is to deny the applicant's request for spousal support to which she might have been entitled had she divorced in Ontario because Part III of the Ontario *Family Law Act*, dealing with support obligations, does not include the phrase "former spouse" when describing who may apply for support. However, unless the wording in the *Family Law Act* is changed to define "spouse" to explicitly include a former spouse, a party to a foreign divorce, cannot seek spousal support under the Ontario *Family Law Act*. A PDF version is available to download [here](#).

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