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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.

Appeal of \$24K Damages Award Against Assault Complainant

A Niagara woman is appealing a judgement requiring her to pay almost \$24,000 to her ex-boyfriend who she says sexually assaulted her. The woman reported to the police that she was sexually assaulted by her ex-boyfriend while they were dating. The case stemmed back to an incident in March 2011 when the woman and her boyfriend of eight months argued over a peach stain on the comforter on his bed. He says it was a jam stain; she thought it was lipstick. There was sexual contact which he says was consensual and she says was forced. The police investigated and decided there was enough evidence to lay criminal charges against the ex-boyfriend. However, after a judicial pre-trial the Crown Attorney dropped the charges before the trial. This often happens when the

Crown Attorney feels there is no reasonable prospect of obtaining a conviction at trial.

After the charges were dropped, the ex-boyfriend sued the woman for damages saying the criminal charges “destroyed” his life. Deputy judge David Black relied on texts exchanged after the alleged assault where the woman called her ex-boyfriend a liar, cheater and abuser. The judge found that she was emotionally upset and angry for what she saw as a betrayal on his part. The judge found that the woman lied about the assault. He found that she made the claim because she thought the boyfriend was cheating on her and she was jealous and emotional.

The woman appealed arguing that the judge relied on myths

and stereotypes in assuming that she was a scorned, unstable woman.

The Ontario Superior Court upheld the ruling requiring the woman to pay \$24,000.00 to the man she accused of sexually assaulting her. The judge dismissed the appeal saying that the deputy judge below was entitled to believe the man over the woman and the judge's decision was not improper.

This case follows a previous case where a judge ordered 2 sisters to pay their uncle \$125,000.00 for defamation for accusing him of sexually assaulting them when they were children.

Cases like this create a chilling effect on victims coming forward. Coming forward after being sexually assaulted is always difficult. Going through a criminal case is tough for any complainant but particularly so for sexual assault victims. In all cases, the criminal justice system favours the defendant in several important respects: 1) The defendant is presumed innocent, 2) There is a very high burden of proof and the Crown must prove its case beyond a reasonable doubt, 3) The Crown must disclose all evidence in its possession while the defendant

need not disclose any evidence, and 4) The defendant has a right to remain silent whereas the victim has to testify and be cross examined by the defendant's lawyer.

While it is understandable that we have protections to ensure that innocent people are not wrongly convicted, there is a good argument that there should be some different rules for sexual assault cases. Sexual assault cases are unique because there is rarely other evidence, particularly when the only issue is whether or not there was consent. In such cases, it is only the complainant's word that is available as evidence to prove the offense occurred.

In June, Justice Minister Jody Wilson-Raybould announced Bill C-51 which includes amendments to the Criminal Code of Canada designed to strengthen and broaden sexual assault laws. Among several changes, the legislation would clarify that an unconscious person cannot consent to sex. A second major amendment in the Bill limits the type of evidence that can be used in sexual assault trials. Excluded may be "communications of a sexual nature or communications for sexual

purpose" including private records of the complainant held by the accused. That type of evidence would have to be disclosed before the trial and the trial judge would have to rule on its admissibility. Even with these changes, criminal trials are hard for sexual assault complainants. Low conviction rates provide a disincentive to come forward and report. Potential civil lawsuits for defamation add further disincentive to assault survivors coming forward. It is important to remember that every person who is assaulted and has the courage to go to the police and carry through with a criminal trial makes an important contribution regardless of the outcome of the case. Without the courage of countless men and women who have come forward in this fashion, the world would be a different place. Because people speak out laws change, society changes, there is more awareness and education and ultimately the world is a better place.