



Family Law

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Making and Unmaking Marriages

After a 43-year marriage, a wife left the family home and told her husband that she wanted a divorce. The husband opposed the divorce and claimed that she suffered from a psychological condition called “delusional disorder”. He said that she had delusions that he was unfaithful and was persecuting her. He said that these delusions prevented her from having the necessary mental capacity to intend to live separate and apart from him.

Delusional disorder is a rare condition in which a sufferer clings to false beliefs about things happening in his life. A person with delusional disorder can still function in a normal, healthy way in other aspects of his life, yet the delusions persist even if they are certainly and definitely false. One example of the disorder is called “delusional jealousy”. Sufferers are convinced that their spouse or sexual partner was unfaithful, even if there is no reasonable or objective proof of infidelity.

The question of mental capacity is central to a person’s status. A valid marriage requires the parties to intend to marry each other. To end a marriage, one person must intend to live separate and apart from the other.

In this case, each side presented evidence at trial. The wife proved that she had taken care of her ailing mother-in-law for several months. She moved in with the elderly woman, took care of her personal needs, and used a power of attorney to manage the woman’s finances. After she left her husband, the wife handled her own affairs. She hired a lawyer and gave him instructions about how to conduct the trial. She told the court that she left because she was tired of living with a man who was angry, quarrelsome, and hard to live with. Her family doctor said that she did not have delusional disorder.

The husband relied on the testimony of a medical professional – a university psychology professor who instructed on delusional disorder. Several years earlier, he had been the couple’s marriage counsellor. He believed that she had the disorder.

After long discussions, the wife agreed to be examined by an independent psychologist. The psychologist was asked two questions – did the wife decide to separate because of a mental disorder, and was there any reasonable prospect of reconciliation? He concluded that she had a good reason for leaving – she was unhappy in the marriage because of the way she and her husband interacted, not from any particular beliefs she had about him. She was happy living apart from him and enjoyed her new life. The psychologist concluded that reconciliation was unlikely.

The husband was displeased and wanted yet another independent medical assessment. When the Judge denied that request, the husband appealed to the B.C. Court of Appeal and ultimately the Supreme Court of Canada. He was unsuccessful.

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The case shows the importance of mental capacity in marriage. Had the husband proved that his wife was mentally incapable of intending to live separate and apart, it would have bound her into the marriage. She would have been unable to choose to end the marriage as long as she had the delusions.

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The law recognizes different levels of mental capacity for different tasks. Most people know about testamentary capacity – the ability to make a valid Will. Having testamentary capacity means you must:

- understand what a Will is;
- know that you are making a Will;
- know what property you own; and
- be aware of the people (spouse, partner, children) you would normally feel you should provide for.

Regarding marriages, judges have traditionally recognized three levels of mental capacity:

- the capacity to separate. Wanting to live apart is the simplest action and requires the lowest competency.
- the capacity to divorce. Because divorce combines physical separation with the undoing of the marriage contract, it requires greater capacity. This is also the standard for measuring capacity to marry.
- the capacity to instruct counsel. Not only is the marriage undone, but the person must understand and communicate what she wants for her financial and legal future. It requires the highest competency.

Status is important. Different laws apply depending on whether a person is single, married, separated, divorced, or in a common-law (Adult Interdependent Partner) relationship. Status determines the scope of your legal obligations to others – to support them financially, to provide for them in your Will, and to dispose of property. If you have a particular status and then lose the mental capacity to change it, you can be stuck in a situation forever – including a loveless marriage.

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