



# Opening Closed Doors —

## When should domestic violence victims sue their abusers?

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**M**r. Dhaliwal hit his wife with a closed fist and a broom handle and was convicted of criminal assault. In the divorce, Ms. Dhaliwal included a tort claim for assault and battery and asked for damages (money). She won.<sup>1</sup>

Mr. Danicic intimidated and harassed his former partner by mailing her threatening letters and humiliating sexual photographs. He said he'd send them to Ms. McLean's grandmother, her parents, her doctor and even her hairdresser. Mr. Danicic was charged with extortion and uttering threats. In her family law claim, Ms. McLean asked for damages for intentional infliction of mental suffering and emotional distress. She won at trial<sup>2</sup> and Mr. Danicic's appeal was dismissed.<sup>3</sup>

Two months after meeting by telephone, Ms. Raju travelled to Fiji to marry Mr. Kumar. Eighteen months later he immigrated to Canada. The marriage quickly broke down when he

admitted he'd married Ms. Raju only so that he could come to Canada. When he filed for divorce, his wife claimed damages for fraudulent misrepresentation in inducing marriage. She won.<sup>4</sup>

Ms. Jones divorced her husband. Mr. Jones then moved in with Ms. Tsige. Ms. Tsige worked at the Bank of Montreal – the same branch where Ms. Jones banked. Ms. Tsige snooped in Ms. Jones' account 174 times over four years to see if Mr. Jones was paying child support to his ex-wife. Ms. Jones sued Ms. Tsige for invasion of privacy. She said the snooping was unauthorized, it was highly offensive to the reasonable person, it intruded on a private matter, and it caused her anguish and suffering. The judge gave Ms. Jones damages for a new tort – “intrusion on seclusion.”<sup>5</sup>

Criminal or quasi-criminal conduct surfaces regularly in family law. Historically, criminal behaviour was a matter for only the criminal courts. In the 1980s, injured spouses (and abused children) began taking matters into their own hands. Increasingly, they are adding tort claims to their family law proceedings. Injured spouses have successfully sued for assault, battery, sexual assault, confinement, fraudulent misrepresentation and conspiracy. Other claims, such as malicious prosecution, abuse of process, or sexually transmitted diseases have been less successful.

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## Why Sue?

Tort law can give you a number of things that family law and criminal law can't.

1. Almost every divorce goes ahead on the ground of one year's separation. This no-fault treatment sends the message that family violence is not real violence – a message that justifies cruelty. A tort case can lay the blame for the marriage breakdown.
2. More money. Even if the abuser has been convicted of a crime, the victim can still bring a civil action for compensation. Although most awards are modest (often around \$10,000 and ranging upward to \$40,000), in extreme cases (38 years of constant mental and physical abuse<sup>6</sup>) the damages can go as high as \$175,000.
3. Generally speaking, bad behaviour is not cause for an unequal division of matrimonial property. Most matrimonial property is shared half-and-half. However, if the victim successfully adds a tort claim to a matrimonial property claim, the judge may dip into the abuser's one-half share to satisfy the judgment. The victim ends up with a larger share of the property.
4. Similarly, a victim might be able to use a tort action as a bargaining chip in negotiations. This can be a bit tricky as judges can be skeptical if the issue is raised while negotiating a separation agreement.
5. Unlike the victim's passive role in a criminal case, a tort claim empowers the victim. Tort is plaintiff-driven, not prosecutor-driven. The injured spouse is in charge.

6. Criminal charges usually focus on only a few incidents that can be most easily proven. Tort claims can encompass decades of abuse.
7. Victims commonly feel that the criminal process failed to do justice. Retribution can be an important outcome of a tort case.
8. Victims may believe that a tort action might deter other potential abusers. Some survivors use this type of social action as a part of their recovery plans.
9. Media coverage in high-profile cases exposes and condemns hidden violence. It offers the potential for public education and can encourage other victims to pursue their own claims.

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In theory, violence is violence, whether between strangers or between spouses. In practice, there is a fundamental difference between the two. Tort law evolved to regulate relationships between strangers. In many cases it does not fit the needs of a victim of intimate partner violence. My next column will highlight some of the reasons why a victim may choose to forgo a meritorious tort claim.

#### Notes

- 1 *Dhaliwal v. Dhaliwal* 1997 CanLII 2762 (BC SC) <http://canlii.ca/t/1f5m8>
- 2 *McLean v. Danicic* 2009 CanLII 28892 (ON SC) <http://canlii.ca/t/23tq0>
- 3 *McLean v. Danicic* 2010 ONCA 22 (ON CA) [www.ontariocourts.ca/decisions/2010/january/2010ONCA0022.htm](http://www.ontariocourts.ca/decisions/2010/january/2010ONCA0022.htm)
- 4 *Raju v. Kumar* 2006 BCSC 439 (CanLII) (BC SC) <http://canlii.ca/t/1mw8x>
- 5 *Jones v. Tsige* 2012 ONCA 32 (CanLII) (ON CA) <http://canlii.ca/t/fpnlD>
- 6 *Flachs v. Flachs* 2002 CarswellOnt 1285 (ON SC)

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