



# Opening Closed Doors — The downside of suing your abuser

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In the last issue of *LawNow* I outlined a number of good reasons why you might want to sue the person who is abusing you. However, there are an equal number of good reasons why you might choose to pass up a civil suit. Any one or a combination of the following options might be all you want or need. Where do you fit in?<sup>1</sup>

## Court is not for me

1. You've simply had enough. Just leaving will let you move on with your life.
2. You want to maintain the relationship and avoid conflict.
3. Many victims feel ashamed at having stayed in an abusive relationship for a long time. Talking about it can be even more humiliating, especially when other people don't believe you or look down on you for it. Men abused by women are particularly vulnerable to society's scorn, as are victims in same-sex relationships.
4. You might choose to forgive your abuser as part of your healing process.

### Other resources meet your needs

1. Resources for victims are available in shelters, through educational programs or in peer support groups. Professional and volunteer organisations can help you heal and learn how to avoid being drawn into another abusive relationship.
2. There are many abuser treatment programs. You might be satisfied if your abuser goes through a course of counselling, whether or not you choose to stay in the relationship.
3. Most provinces offer financial resources to victims of crime. A sum of money might give you enough independence to get on your feet and away from your abuser.
4. You might choose to become a resource for other victims. Some people find meaning in their own suffering by helping others overcome theirs.

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### Criminal prosecution is enough for you

1. Convictions for assault, sexual assault, uttering threats, forcible confinement and intimidation can carry substantial sentences. Criminal harassment (stalking) is a particularly useful charge – section 264(1) of the *Criminal Code* protects the victim's physical, emotional and psychological safety. You don't have to be hit to be a victim of a crime.
2. Provincial court judges can grant peace bonds. The abuser must keep the peace, be of good behaviour, and obey certain conditions. The judge can order the abuser to stay away from you and not contact you for up to one year. If the abuser breaches the peace bond, he or she can be arrested again.

### Family law remedies

Victims have several options to address or prevent violence. Most of them are swifter and more certain than a civil law tort action.

1. If you need immediate protection, you can apply for an Emergency Protection Order. EPOs are also called Emergency Intervention Orders, Victim Assistance Orders, Prevention Orders and Protection Orders. The requirements vary from province to province. Check the legislation where you live.
2. You can apply for a Restraining Order.
3. Depending on the nature of your relationship with the abuser, you might qualify for an Exclusive Home Possession Order to keep your abuser out of your home.

## Going all the way – suing in civil court

Starting a lawsuit is a big commitment.

1. There are time limitations. You might be making life-changing legal decisions while you are still struggling with the consequences of abuse. You might already be stretched to the limit with other things – a move, a new job, single parenting, lack of financial resources, lack of family support, or religious or cultural pressures.
2. The complication of children – unless the abuser abandons his children, the two of you are connected for life. Civil lawsuits can drag on for years. Research shows that parental conflict is the number one predictor of poor outcomes for children after divorce. Are you confident that you can run the lawsuit and protect your children from the inevitable conflict with the other parent?
3. The complication of financial dependence – you might need child support, partner support, or health benefits from your abuser’s employer. Vindictive abusers can destroy property, quit jobs, hide income and assets, ruin your credit rating and jeopardise your employment.
4. It might spark retaliatory litigation – “You sue me for assault, I’ll sue you for defamation.”
5. Civil court isn’t civil. You will need to publicly confront your abuser in court, reveal deeply personal secrets, undergo stressful cross-examination and risk ridicule or indifference from family members or other people important to you.
6. Civil lawsuits are long, expensive, and complicated.
7. Starting the lawsuit might wipe out the possibility of settling the family law action.
8. You might end up fighting battles in two levels of court at the same time – provincial court for the family law action and superior court for the tort claim.
9. If you have settled your family law action, you may have inadvertently given up your right to sue. The general release clauses in Separation Agreements and Minutes of Settlement might extinguish any tort claims that occurred before the date you signed the contract.
10. If you received a family court judgment, you might be up against the legal doctrine of *res judicata*. This is the principle that a matter can be litigated only once. If a judge gives you an Exclusive Home Possession Order because your spouse assaulted you, that EHPO may prevent you from later bringing a claim for damages based on the same assault.
11. You go all the way and get a judgment for damages, but your abuser has no money or assets. It is uncollectable. There is no insurance that covers domestic violence.
12. What if you lose?

Research shows that parental conflict is the number one predictor of poor outcomes for children after divorce. Are you confident that you can run the lawsuit and protect your children from the inevitable conflict with the other parent?

### Do a thorough cost/benefit analysis

Consider very carefully whether what you'll have to put into the lawsuit is worth what you might get out of it. Know what you'll be up against and the emotional and financial price you and your family might pay even if you're successful. Look for the balanced approach that will best serve you and your family.

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### Notes

1 For excellent, in-depth analysis, see:

“Striking Back: The Tort Action for Spousal Violence” by Laura Buckingham, in the *Canadian Journal of Family Law* (2007) 23 Can. J. Fam. L. 273 – 313.

“Tort Claims in Family Law — The Frontier” by Georgina L. Carson and Michael Stangarone, in the *Canadian Family Law Quarterly* (2010) 29 CFLQ 253.

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