

Suing Your Abuser

One legal concept that we left behind last century was the idea that spouses couldn't sue each other in tort. Before 1970, if a person assaulted a stranger, the victim could sue the wrongdoer for damages, but if the victim were the spouse, he or she could not. We called this concept "spousal tort immunity." It stemmed from an old legal fiction that husband and wife are "one person" so neither could sue the other for wrongs during the marriage. Over the past 30 years, society's awareness of domestic violence increased and the unfairness of this concept was obvious to all. All the Canadian common law provinces responded by 1994 and abolished the concept.

Suing your abuser in tort can provide valuable financial and emotional relief. Even when there are also criminal charges laid, the victim often feels she or he has more control over and involvement in a civil suit. Certainly, for abused children, civil proceedings can work to make an abuser publically accountable. A spouse who misses work because she's been injured can ask her abuser to pay her for her lost wages, for her medical expenses, and for general damages for her pain and suffering. If the abuser's conduct is severe enough, the victim can ask for additional punitive (also called exemplary) damages, specifically to punish the abuser and deter such future conduct.

But obtaining vindication through the court system comes at a cost. The lawsuit is usually highly stressful. It can be complicated and expensive. Already fragmented family relationships may disintegrate further as the litigants call on other family members to take sides. Starting an action may spark retaliatory litigation - "If you sue me for assault, I'll sue you for defamation." Joining a domestic violence claim with a divorce or matrimonial property action may wipe out the possibility of settlement.

If you're considering bringing a tort action for injuries you received from a family member, keep the following points in mind:

- If you're successful, can the wrongdoer pay the damages? Is it possible that the wrongdoer has insurance coverage? (Generally there is no homeowner's insurance coverage where the act is intentional, but you might be able to frame your case in negligence.)
- Do you qualify for a payment from your provincial criminal injuries compensation board?

- Watch your limitation periods for starting your action - different rules apply to children, to adult survivors of child sexual abuse, and for different causes of action.
- Be careful if you're bringing other actions too. For example, say you want exclusive possession of the matrimonial home because the other spouse assaulted you. A judge grants you relief on that basis. This may then prevent you from bringing any further claim for damages arising from the abuse, on the legal doctrine of *res judicata*. This is the principle that a matter can be litigated only once. You must deal with all possible claims arising from that conduct at the same time or those claims are forever barred.
- Be mindful of the level of court in which you are applying. The provincial or unified family court of your province may not have the jurisdiction to hear tort claims.
- Be very careful about any separation agreement or minutes of settlement that you sign. These often contain general release clauses that will also extinguish a claim for any tort that occurred before the date you signed the agreement.
- Learn about the law and legal process. Remember, as plaintiff, you have the burden of proof. If you fail to meet that burden at the end of the day, you're going to lose, and you may end up paying the other side's costs, which could be substantial.
- 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 consider the emotional and financial price you and your family might pay even if you're successful.

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If you think you've got a case, speak to an experienced lawyer and get the information you need to make an informed decision.

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