

Man can sue ex-wife's lawyer, court rules

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A lawsuit that accuses a Toronto lawyer of counselling her client to fabricate evidence in a bitter divorce contest should be allowed to proceed to trial, the Ontario Court of Appeal ruled yesterday.

The litigant -- Andrew Lawrence -- alleges that he was wrongly imprisoned for almost 10 days after his estranged wife, Carol Lawrence, made up several stories about him assaulting her, including attacking her with a hot iron and a set of keys.

His lawsuit says that family lawyer Theresa MacLean advised Ms. Lawrence to make up stories of domestic abuse to enhance her divorce claims to their marital home and children.

Mr. Lawrence was ultimately acquitted on April 24, 2003, of nine of the 10 criminal charges against him. He was convicted of breaching his bail conditions by placing a phone call to his estranged wife -- which he admitted.

After his trial, Mr. Lawrence launched his lawsuit, alleging that Ms. MacLean acted "with reckless disregard for the truth and consequences" of her conduct. It was thrown out last year by an Ontario Superior Court judge on the basis that the allegations did not constitute "a reasonable cause of action."

However, in a 2-1 ruling yesterday, the Court of Appeal reinstated the lawsuit. It said the allegations are "arguably capable of implicating" Ms. MacLean in false imprisonment, malicious prosecution, abuse of process and civil conspiracy.

"I almost fainted when I heard about the decision," Mr. Lawrence said in an interview. He said that Ms. MacLean "can make life as difficult as she wants during a divorce -- that's fine and dandy. But when you counsel another person to commit a crime, you can't hide under the banner of being a lawyer."

Mr. Lawrence's lawyer, Joseph Markin, said the case will ring true for many men being prosecuted for domestic abuse. Police are required

to automatically lay charges when wives allege abuse, he said yesterday, which makes it a useful tool in divorce proceedings.

"It would be intolerable if a lawyer could do that," Mr. Markin said.

Neither Ms. MacLean nor her co-counsel on the case, Carolyn MacLean, returned phone calls yesterday.

Ms. Lawrence alleged that her husband pinned her against a wall on May 15, 2001, plugged in an iron and held it close to her face once it had heated up. On another occasion, she said, he threw a set of keys at her, causing a bad cut.

She also alleged that in a separate attack in late 2000, an enraged Mr. Lawrence threw her to the floor and injured her neck. In yet another incident, he allegedly pushed her onto a bed and then tossed her onto their bedroom floor.

The judge at Mr. Lawrence's trial had numerous problems with the Crown's evidence. He was suspicious about Ms. Lawrence's lack of scarring from the iron incident and the fact that she did not struggle with her husband. "She appears to have survived that incident without any obvious scar, cut, bruise or other injury," the judge said. "The description begs belief."

The trial judge also found it disturbing that the dates Ms. Lawrence supplied for some of incidents varied substantially. He said the complainant struck him as a resolute character who was not easily controlled by others.

"She impressed me as someone of obvious competence and courage," the judge said. "She is not the submissive, controlled spouse she would have us accept. She is capable, under stress and duress, in my view, of concocting scenarios."

Fired from his job at a car plant recently, he is living on unemployment insurance. Mr. Lawrence said his wife left him with their three children about a year ago, and he hasn't heard from her in several months.