NO LEGAL WAY OUT

R v Ryan,
Domestic Abuse, and the Defence of Duress

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INTRODUCTION

On 17 March 2008, following a Royal Canadian Mounted Police (RCMP) investigation and sting operation, Nicole Ryan was charged with "counselling the commission of an offence not committed."[1] She had attempted to hire an individual to kill her former spouse, Michael Ryan. After years of abuse and several requests to the RCMP for protection against her estranged husband, Nicole (referred to throughout this book as Doucet) accepted a call from an undercover officer who offered to solve her problem by carrying out a contract killing of Ryan. While Doucet could not claim self-defence – she was not directly responding to "an unlawful assault" and would not have been present at the time of the proposed hit[2] – her lawyer, Joel Pink, argued that she had acted under duress. Duress is a defence based on the concept of moral involuntariness: as "a concession to human frailty," the law recognizes that "only voluntary conduct ... behaviour that is the product of a free will and controlled body ... should attract the penalty and stigma of criminal liability."[3] As an abused woman who had been denied help by the police, Pink argued, Doucet had no legal means by which to protect herself and her daughter. Although this was a novel application of duress, the Crown opposed only on the facts, arguing she did not need to kill her husband, because she had left him and was therefore safe and on her way to an independent life. Doucet was acquitted at trial by Justice David Farrar, and his verdict was unanimously upheld by the Nova Scotia Court of Appeal.[4] Perhaps surprisingly, the Supreme Court of Canada then exercised its discretion to allow a Crown appeal.

The court believed Doucet's account of abuse, describing Ryan as having imposed a "reign of terror" over her.[5] Further, it castigated the RCMP, stating, "There is also a disquieting fact that, on the record before us, it seems that the authorities were much quicker to intervene to protect Mr. Ryan than they had been to respond to [Ms. Doucet's] request for help."[6] Nonetheless, the court overturned the acquittal on doctrinal grounds, finding the defence of duress was not available to Doucet. But its decision did not end there. Citing the fact that the Crown had changed its own arguments about the availability of duress on appeal, which would have affected decisions taken by the defence, it found Doucet could not be assured a fair trial in the future and the majority issued a stay of proceedings, with Justice Morris Fish dissenting on this aspect of the decision. The majority justices also noted the abuse, indicating "the protracted proceedings" had "taken an enormous toll on her" that a further trial would only exacerbate.[7] Although one might question the ethics of engaging in a sting operation to arrest a battered woman, this approach by the police was not criticized by any level of court, as such tactics were – and remain – legal in Canada.[8]

The case generated intense public discussion. While initially the media seemed sympathetic to Doucet's plight and supportive of the stay of proceedings, this started to change after the simultaneous release of three documents shortly after the Supreme Court of Canada issued its decision. First, Michael Ryan produced and released a YouTube video with the goal of telling his side of the story.[9] Throughout the video, he blamed Doucet and her volatile family for the failure of their marriage, denied abuse, claimed he had been the victim in the marriage, and asserted his reputation had been sullied. Second, a redacted video recording of the undercover police officer's conversation with Nicole Doucet, wherein she denied having suffered abuse at the hands of Ryan, was obtained from an anonymous source and released by the CBC without important context about intimate partner violence and its impact on victims.[10] Third, controversy about the case prompted an investigation of the RCMP's response to Doucet's calls for help in the months before her arrest, and the Commission for Public Complaints issued a report absolving the RCMP of wrongdoing, concluding that "the RCMP's

policy regarding violence in relationships ... was followed at all times."[11] The combined impact of these three interventions was to unleash media commentary accusing Nicole Doucet of lying and deeply critical of the Supreme Court of Canada's decision. This culminated in an episode of *W5* – a highly respected investigative journalism program – for which the RCMP and Michael Ryan were the primary sources of information about the case and in which incomplete statements from the court were used. Throughout the episode Doucet was described as a greedy and jealous wife bent on destroying an innocent man.[12]

R v Ryan is a landmark case in Canadian law for all the wrong reasons, both doctrinal and social. Almost thirty years after *R v Lavallee,* in which the parameters of self-defence were broadened to include the perspective of an abused woman, *R v Ryan* presented the court with its first opportunity to consider the implications of battered woman syndrome and coercive control with regard to another defence: duress.[13] Instead of expanding the legal options of women who seek to escape domestic abuse, the Supreme Court eschewed gender-based analysis and cordoned off duress from self-defence. In the wake of this decision, the media produced what we consider to be deeply flawed accounts of the case. This book aims to correct misconceptions about *R v Ryan* and Doucet herself. It tells the story of the Ryan marriage and Doucet's criminal trial from a perspective informed by the evidence on the record and by an understanding of coercive control and the pervasive risk of femicide in the context of marital (and quasi-marital) separation. Given the discrepancy between the information available in various trial documents, particularly the raw evidence from the transcript, and the story the media have told about the case, this text asserts that an inaccurate and incomplete story has been widely circulated to the public.

Although the Supreme Court of Canada decision is the central event examined in this book, the case did not originate at that level. Nor was its impact limited to Doucet, her child, and her former partner. We seek to understand the case in a comprehensive, holistic manner, placing it in the context of battering and coercive control more generally and assessing its impact on the media and the public. To do this, we rely on sources beyond the judgment of the Supreme Court. The court

relied upon – and accepted unequivocally – evidence adduced at trial, and likewise we are deeply reliant on both the written decisions of the lower courts and the original trial records. The latter – most often now audiorecordings and their transcripts – are only partial accounts of any trial and are shaped by the inclusion, or exclusion, of evidence (at the discretion of the judge in the court of first instance). Yet they are the best information available with regard to any given case. While trial records are essential in understanding judicial processes and outcomes, they are expensive and the degree to which they have been preserved varies dramatically between jurisdictions.[14] We were fortunate to get the record of *R v Ryan* as, until recently, Nova Scotia destroyed all trial recordings after a two-year period. However, gaining access to these sources was anything but easy.

At the outset of the first trial, Justice David Farrar noted explicitly that a publication ban applied with regard to the name of the undercover officer who had engaged Doucet during the sting operation.[15] When we received the CDs containing the audio account of the trial, however, we were mistakenly told a total publication ban applied to the entire court record. Because of bureaucratic red tape and misunderstandings at the Digby County Court, it took two years and multiple applications to obtain a formal note indicating the records could be used without restrictions apart from deletion of the name of the undercover officer. Separately, we received permission from the Kentville County Court to review all documents in the Ryan divorce file, which required a trip to Nova Scotia. Many days of court proceedings had to be transcribed from court CDs, and notes were taken on two full bankers' boxes of materials from the divorce proceedings. The time and costs necessary to complete this project would therefore have been a serious impediment to many researchers and certainly to any interested member of the public, and we are deeply grateful for funding from the Social Sciences and Humanities Research Council of Canada to support this research.

Similarly, to fully appreciate the importance of the case with respect to both the legal precedent it set and the public perception of Doucet, we examined the role of the media in getting this story out to the public. As David Taras argues, media coverage is vital for informing

the citizenry about how courts decide cases.[16] Most Canadians cannot attend court to follow a trial, nor can or do they read legal decisions in full. Rather, they rely on the media to report and analyze cases of interest. The media therefore play an important role in educating the public about law, policy, and social issues. While journalists would have faced the challenges described above in obtaining records from the court of first instance, other documents we consulted are readily available. The Supreme Court of Canada did not relate details of the abuse Doucet had faced, but her story had been fully described in the two preceding written decisions. Related decisions regarding Ryan's road rage and interactions with his in-laws also provide insight into his character. These sources, however, were largely ignored by the media in the wake of the Supreme Court decision.

It is important to explain our approach to the use of language. We do not want to soften the violence women face in their homes by "domesticating" it. Yet the description "domestic" remains necessary: not naming the intimate nature of abuse denies the particular harm created when denigration and violence are perpetrated by someone with whom you live, and who claims to love and care for you. We frequently use the term "intimate partner terrorism" because we believe it best captures the way such abuse feels from inside the relationship. We also wish to note that we are, as law professor and noted expert on battered women Elizabeth Sheehy put it, "acutely aware" of our responsibility to Nicole Doucet and do not wish to increase her suffering.[17] She endured fifteen years of terror at the hands of Michael Ryan, all the indignities of a criminal trial, loss of custody and access to her child, and hostile media coverage. In the important process of telling what we believe to be the true story of her case, we seek to treat her with the respect she deserves, to restore some of the public dignity and compassion she was denied in the wake of Michael Ryan's video, the RCMP undercover video clip, and the Commission for Public Complaints report, and to correct misinformation echoed uncritically thereafter in some news media. We hope our work will provide her with some vindication, as well as re-educating the public about her case and the problem of domestic abuse more generally.

Throughout this book we refer to our protagonist as Nicole Doucet. This is somewhat anachronistic, as she was still officially Nicole Ryan at the time she was charged. But during the proceedings she insisted she wanted nothing further to do with either Michael Ryan or his name, and she officially changed her name back to Doucet immediately after her divorce. Except in direct quotations from primary sources, therefore, this text uses her preferred name out of respect for her decision. We also consistently note the degree to which others, including the prosecution and the media, refused to recognize this choice, thereby using naming as a tool with which to upset her on the stand and to discredit her in the court of public opinion.[18]

This book is explicitly and unapologetically feminist, starting from the premise that women deserve safety and dignity in their lives and have the right to equal protection of the law. The methodology employed is feminist practical reasoning. This perspective rejects "the notion that there is a monolithic source for reason, values and justification,"[19] a premise found in legal constructs such as the "reasonable man," as well as strict definitions of "moral involuntariness" and the defence of duress. Instead, feminist practical reasoning draws on the values and experiences of those who are traditionally outsiders to the law, such as women who experience domestic abuse.[20] We use an explicitly narrative approach, which "focuses on presenting the facts of a particular case as a story."[21] The story of a case is crucial to legal decision making, and the feminist narrative method seeks to reveal the falsity of the law's claims to neutrality and to oppose its gendered power dynamics.[22] Narrative method also humanizes the law.[23]

This book is written from the perspective of the harms done to Nicole Doucet: by Michael Ryan, by the RCMP, by the Supreme Court of Canada, and by the media. Five chronological chapters explore the wider context of intimate partner violence and the law in Canada, the initial trial and the evidence of abuse, the written decisions of the two courts in Nova Scotia and the Supreme Court of Canada, the RCMP investigation, and media responses throughout.

Chapter 1 outlines the extent of intimate partner terrorism in Canada, and provides background about the legal status of women and

historical responses to women facing abuse.[24] It offers a brief account of interpretations of battered woman syndrome and coercive control, delineating the means used by abusers and controllers to instill fear in their victims and exposing the reality of the pervasive risk of femicide at the time of separation. We correct misconceptions that women exaggerate abuse and control, that violence in the family is not a gendered problem, and that women can simply leave an abusive relationship and are safe once they do so. We conclude with a discussion of the groundbreaking case of *R v Lavallee,* in which the Supreme Court of Canada expanded the parameters of self-defence.

Chapter 2 provides a timeline for the Ryan marriage and explores the proceedings of the court of first instance, examining in detail the arguments made by the Crown and defence, as well as the evidence presented by various expert witnesses. The description of the marriage is drawn from the transcript of Doucet's criminal trial, supplemented with evidence from the couple's divorce proceedings, the criminal prosecution of Michael Ryan in relation to his road rage, and criminal matters between Ryan and his former father-in-law, Doucet's stepfather, Herbie Boudreau.

The written decision of Justice Farrar at the Nova Scotia Supreme Court, the unanimous decision of the Nova Scotia Court of Appeal, and the ruling of the Supreme Court of Canada are the subjects of Chapter 3.[25] We illustrate that the first two decisions were grounded in gendered analysis, enabling both courts to expand the defence of duress by considering the context of coercive control. Next, we consider the arguments of the appellant and respondent and the facta of intervenors presented to the Supreme Court, before analyzing the court's limited and doctrinal interpretation of duress, its decision to issue a stay of proceedings, and its critique of the RCMP. We argue that while the stay protected Doucet as an individual, the court missed an opportunity to contextualize the decision and to broaden the defences available to other battered and coerced women.

Controversy aroused by the court's criticism of the RCMP led to demands for an investigation of the actions of the police in the months before Doucet's arrest, and Chapter 4 examines in detail the report of

the Commission for Public Complaints. We deconstruct inconsistencies in the document, pointing out that an occasion to reconsider RCMP and other police responses to coercive control was not pursued. This is not entirely surprising: others have been highly critical of the limitations of the process of review of the RCMP.

Chapter 5 examines media coverage of the case and responses to the report, with a focus on portrayals of Doucet and her motivation in hiring a contract killer. While the media were initially sympathetic, later reports and commentary undermined both public feeling for Doucet and popular understanding of the dilemmas faced by all abused and coerced women. We conclude with a critique of the *W5* episode in which Doucet was described as a greedy wife, driven by a desire for revenge. This remains the most accessible version of events available to the average Canadian.

R v Ryan serves as a salient reminder that police services to battered women remain limited and ineffective and that influential Supreme Court cases are not always progressive. Disturbingly, moreover, media responses to the case are emblematic of a culture in which violence against women is normalized, denied, minimized, and ignored, and in which public interpretations of law can be deeply flawed. These responses are dangerous for all women, not only because any woman may experience abuse but also because "violence against women in the home was and is premised on beliefs regarding the 'rightness' of male power and the 'entitlement' of men to exercise control over women's behaviour and actions."[26] These attitudes must be exposed and contested and should have no place in law or courtrooms, police services or the media. In this spirit, the conclusion looks at recent changes to the law of self-defence in Canada and progress made regarding the criminalization of coercive control in some jurisdictions outside the country. It is an urgent priority to improve education and protocols for police, continue law reform, increase funding for shelters and other services for victims of coercive control, and reduce sexism in media coverage of the problems of violence against women and femicide. This book uses a landmark and extraordinary Supreme Court case to illustrate the depth and breadth of our failure to deal effectively with intimate partner terrorism.

1

Understanding Domestic Abuse and Femicide

While the legal case against Nicole Doucet is unique, her predicament – being harassed, coerced, and abused by her spouse – was and is not. In fact, violence against women and girls is endemic in all societies and is, according to former United Nations secretary-general Kofi Annan, "the most shameful human rights violation."[1] Canada, sadly, is not an exception. In fact, every six days in this country a woman is killed by her male partner or former partner.[2] Some 30 percent of all violent crimes reported to police are instances of intimate partner violence, and 79 percent of such cases involve a female victim.[3] As the New Zealand Family Violence Death Review Committee notes, "while individual men can be victims of intimate partner violence, social patterns of harm reflect the fact that structural inequity and community values and beliefs support the perpetration of male violence against women."[4] Theorizing this problem is essential, but we must also always remember that abused women are not simply statistics; they are individuals – like Nicole Doucet – whose day-to-day freedoms have been constrained and lives placed at risk.

The gender gap in intimate partner violence is most graphically evident in statistics and patterns regarding spousal murder.[5] Murder of female partners by men is often deliberate and calculated: they "hunt

down and kill a spouse who has left them ... kill wives as part of planned murder-suicides ... [and] perpetuate familial massacres."[6] Ninety-five percent of those accused of murder-suicide (and murder-attempted suicide) in Canada are men, and most often the victim is his intimate partner, although children and other relatives are also sometimes killed.[7] Women, in comparison, kill or attempt to kill male partners far less frequently and typically "after years of suffering physical violence, after they have exhausted all available sources of assistance, when they feel trapped, and because they fear for their own lives."[8] Notably, this discrepancy has increased in jurisdictions in which shelters are available for female victims of male violence; fewer women have to kill men in self-defence when they can instead go to shelters, but shelters, as temporary solutions, can't keep women and children safe from men determined to kill them.[9] Women are driven to self-defence in the most desperate cases at least in part because of the failure of police, courts, and the wider community to provide them with any long-term means of escape from violent and controlling men, a reality described clearly in the transcripts of Doucet's trial; battered women are socially entrapped by their partners and by the failure of social services and the justice system. Yet the public remains ill-informed about intimate partner violence and spousal murder. It is also ill-informed about the links between violence in the home and patriarchy. As James Ptacek argues, "individual women are assaulted by individual men, but the ability of so many men to repeatedly assault, terrorize, and control so many women draws on institutional collusion and gender inequality."[10] We mourn women who die at the hands of male spouses, however, we construct such deaths as exceptional instead of connecting them to wider ongoing patterns of male violence and dominance.[11] We both minimize and excuse violence when men harm, and even kill, partners, and paradoxically paint women who fight back against abusers as deviant and dangerous.[12] This is the context in which we must understand Doucet's agreement to hire a hit man to kill her husband, her experiences in court, and the media aftermath of *R v Ryan*.

SOCIETAL RESPONSES TO VIOLENCE AGAINST WOMEN

The current reality of pervasive violence against women is rooted in a history of legal subordination, particularly in marriage. Law both reflected and reinforced conceptions of women as weak, dependent, and untrustworthy. Instead of protecting women, the common law authorized men to use violence to ensure the compliance of wives (as men were similarly permitted to chastise minors and servants).[13] A wife was not considered a separate legal person in marriage. Because wives could not own property in marriage until the late nineteenth century, it was extremely difficult for women to escape from violent men; on-going inequality of access to familial assets continues to create barriers for women seeking to leave abusive men.[14] Although criminal prosecution of wife beating was possible by the 1830s, and police might intervene to issue a protection order in the most egregious circumstances, few women had the financial means to survive on their own, and protection orders, then as now, were ineffective: absent incarceration, men simply couldn't – and can't – be monitored all the time.[15] Similarly, while wife killing was a crime, law enforcement often considered it accidental, a result of excessive chastisement, or justified if she had been unfaithful. Only recently have a number of jurisdictions eliminated provocation as a defence in murder in circumstances in which a man finds his partner *in flagrante*.[16] In contrast, until 1790 in England, a wife's murder of her husband was deemed petit treason – the killing of the little king – and had the special punishment of public burning at the stake.[17]

In Canada and elsewhere, suffragists and other first-wave feminists in the late nineteenth and early twentieth centuries named domestic violence as a social problem, but they largely portrayed it as a lower-class crime, perpetuated exclusively by men who drank.[18] Domestic or intimate partner violence was brought to public attention again in the 1970s by second-wave feminists, who recognized such violence had no class or cultural boundaries and was not exclusive to men who drank

or abused drugs. Activist individuals and organizations provided shelter and support for women seeking to escape abusive men and insisted violence against women was a social, not an individual, problem.[19] Activists also wrote reports and lobbied for mandatory charging policies for police responding to intimate partner violence. This was necessary because police rarely charged when they were called to domestic situations: doing so was at the discretion of the victim and she was asked about her choice in the presence of the perpetrator. In the early 1980s, as feminists mounted campaigns for reform, the solicitor general of Canada instructed the RCMP to issue charges independently of the wishes of battered women, and Roy McMurtry, then attorney general of Ontario, sent a memo to all provincial Crown attorneys urging them to increase charging in domestic violence cases.[20] In 1983, the federal government designated the first funding for shelters and transition houses.[21] Activists also argued for recognition of the battering context, and therefore reduced sentences, when women fought back and killed their abusers.[22]

BATTERED WOMAN SYNDROME

In the academic context, advocates for women began in the 1970s to theorize domestic violence as primarily rooted in men's power and control.[23] Battered woman syndrome was introduced to the public in 1977 by Lenore Walker, who understood it to consist of three cyclical and repeated phases: tension building, acute abuse, and apologies.[24] Walker argued that repeatedly experiencing this cycle leads to learned helplessness or psychological dependency.[25] According to this theory, the battered woman becomes increasingly passive and feels she has no control over the abusive relationship and cannot leave. She tries to keep the man happy and learns to adapt her behaviour to best reduce her victimization.

Evidence of battered woman syndrome, admitted via expert psychiatric evidence at trial, allowed the 1990 Supreme Court of Canada acquittal of Angelique Lyn Lavallee, who had shot her abusive partner in the back. While the *Lavallee* decision represented an important legal

advancement for women, battered woman syndrome has been critiqued as an inadequate means of understanding the dilemmas faced by women abused by their intimate partners.[26] It considers only physical violence as abuse; verbal abuse, denigration, and other threatening behaviours are minimized as tension building, not abusive in and of themselves. The theory also fails to acknowledge that abuse is often not experienced as a cycle and many women never get apologies or a reprieve from the threat of violence. Further, the syndrome pathologizes women instead of the men who abuse them. Not all women respond to battering with helplessness; in fact, all women resist in myriad ways in order to survive, and any form of aggression by the woman may be used in court to suggest she wasn't really battered or she could have left.[27] The syndrome has been further critiqued as bearing out an implicit racial bias, in which racialized women are more likely to be blamed for their own victimization and less likely to have access to a battered woman defence.[28]

COERCIVE CONTROL THEORY

Coercive control theory, first delineated by Evan Stark, corrects many of the stereotypes and shortcomings associated with battered woman syndrome. Coercive control is the constellation of behaviours by which some abusive men, often without using a great deal of daily violence, engage in "malevolent conduct ... to dominate individual women by interweaving repeated physical abuse with three other equally important tactics: intimidation, isolation and control."[29] Even when levels of day-to-day violence are low, as Elizabeth Sheehy notes, "the implication is clear to both partners: if he needs to use more serious violence to achieve his goal, he will."[30] The threat of violence, whether a direct verbal threat, repeated denigration, a joke about a woman's death, a suggestive grip on a knife, a display of prowess with guns, or holding a woman by the neck, can be used just as effectively as a punch to create fear and to enforce control, but these tactics are less likely to be explicitly perceived as violence.[31]

Stark asserts, "[T]he main means used to establish control is the micro-regulation of everyday behaviours associated with stereotypic

female roles, such as how women dress, cook, clean, socialize, care for their children, or perform sexually ... [and] these dynamics give Coercive Control a role in sexual politics that distinguishes it from all other crimes."[32] Coercive controllers intentionally cultivate the specific vulnerabilities of their victims, and these vulnerabilities are gendered. Women are physically smaller than men; most earn less than men and are often financially dependent on their partners; and women are still trained to be submissive and to consider their own interests subordinate to those of their male partners and children. Abusive men closely monitor finances, control purchases, limit a woman's access to cash and credit (even when she is working), and often impose unwanted debt through credit fraud.[33] They also limit her access to friends and family, allowing no freedom of action or opinion. They monitor the woman, follow her through social media and GPS tracking, phone and text repeatedly, and threaten her with humiliation. Such tactics can be particularly effective in maintaining control when women attempt to leave abusers.[34] Controlling men gaslight women, criticizing them constantly and questioning their judgment, such that women begin to doubt their own interpretation of reality and events. Coercive control also almost always includes an element of sexual violence: while women may not think of themselves as having been raped, they are forced to engage in sexual activities they would not themselves have chosen and to have sexual relations when they do not desire to do so.[35] In fact, sexual assault is "one of the most risk-free acts of violence that a man can engage in and is frequently committed repeatedly – not as an isolated act."[36]

Coercive control begins with gestures that, while controlling, seem to be based in concern for the victim, but ultimately control erases her personhood and freedom and requires her to obey completely.[37] This process is based on the lingering patriarchal expectation that women should obey men in domestic relationships. As Stark argues, "masculinity in our society is identified even more closely with being 'in control' than it is with the use or capacity to use force," a fact that can make it difficult for police, courts, the public, and women themselves to see the danger of coercive relationships.[38] After all, if abusive behaviour exploits existing gender norms, police and courts are faced with the

challenge of determining what constitutes "normal" and what is abuse.[39] In contrast, a woman who seeks to control a man does not have the physical or social power to enforce her will: "[A]s a general rule, women simply do not inspire fear in men."[40] Even when enduring domestic violence, men simply do not experience the "deep, existential terror that engulfs female victims of coercive control."[41]

It can be difficult for outsiders to recognize and respond to coercive control. Critics argue that police fail to respond adequately in part because violence against women is understood only as physical, and in part because each battering incident is considered independently rather than as part of a larger pattern. The "entire criminal justice system is set up to address incidents, not processes."[42] Many daily behaviours used to control women are not themselves illegal. They are rarely identified with or as abuse, and consequently are not recognized as such by police. A woman may be very afraid but unable to articulate her fear or to name a specific crime (or action) that is creating it. Too often, police dismiss fear that is not directly associated with a named and proximate extreme act of violence. Instead, women are assumed to be exaggerating or even lying.[43] In their study of how police in the United Kingdom understand coercive control, Amanda Robinson, Andy Myhill, and Julia Wire found that many officers had a "*de facto* policy of not completing risk factors – danger assessments – for verbal only incidents" despite the importance of denigration and verbal threats in coercive control.[44] To the untrained eye, the interactions between a couple may seem normal and "her claims histrionic or paranoid, and her personality 'borderline,' observations that may be supported by a husband's history of his wife 'acting out.'"[45] When police fail to understand this dynamic, they provide abusers with opportunity to gaslight their partners, making survivors question their own reality; they also prove that recourse to police and social services will not be helpful, and thereby reinforce a woman's sense of isolation and helplessness.[46] This may disincline women to make further recourse to police services even when they are in grave danger.[47] The failure to investigate leads to coercive control being underrepresented in official records, and this in turn reinforces a very narrow focus on physical violence.[48] As the New Zealand Family

Violence Death Review Committee notes, "intimate partner violence is a form of entrapment with social and structural dimensions which include sometimes unintentionally harmful responses by the family violence system."[49]

Women also often hesitate to name themselves as experiencing abuse.[50] Many have grown up with female subordination and male violence as normal, internalizing the belief – repeated to them daily by perpetrators – that they provoked the anger, control, and violence. They may also fail to recognize the abuse to which they have been subjected as severe enough to constitute battering.[51] They may feel immense shame about the violence and/or control and not wish them to be exposed, even to family and friends. Further, women dissociate from violent or non-violent abuse in order to survive it, and often have difficulty recalling exact details of how they have been treated.[52] They have disproportionate rates of depression and treatment with tranquilizers and pain medications, which may undermine their ability to present themselves as rational in their recollection of events both to police and in the context of self-defence claims. Experts have identified battered women who "developed a complex profile of psychosocial problems subsequent to the presentation of an initial episode of domestic violence."[53] Sadly, the use of drugs can then be held against women in custody proceedings and in the context of self-defence.[54]

Judith Herman describes coercive control as imposing "domestic captivity"[55] on women and inducing post-traumatic stress disorder (PTSD), including hyperarousal or high alert for danger, flashbacks, and disassociation.[56] While the public readily recognizes symptoms of PTSD in men who have returned from war zones or captivity, many people find it difficult to understand that for some women the home is a place of constant threat of attack. As Stark notes, however, "thinking of women as victims of capture crime helps reframe their reactions ... [I]t is an almost unqualified right for POWs, kidnap victims, and hostages to act proactively to free themselves, even if this means killing their captors when they are most vulnerable."[57] Coercive control, like being kidnapped and held against one's will, constitutes a violation of

basic human rights to security, dignity, autonomy, and liberty, rights that "are universally recognized as worthy of state protection."[58] But women do not receive reliable state protection in the context of intimate partner violence.

Most important, and contrary to popular conceptions, control does not end when women try to leave relationships physically. In fact, "leaving presents a direct challenge to the control exercised by the batterer and he may retaliate with escalation of the violence, and even murder."[59] Women know – and are frequently told by their abusers – that as "dangerous as it is in their own homes, it is almost always far more dangerous to leave."[60] As well as stalking and harassing their partners after separation, coercive men may use the law to their advantage by "filing frivolous lawsuits, making false reports of child abuse, and taking other legal actions as a means of exerting power, forcing contact, and financially burdening their ex-partners."[61] Coercive controllers effectively enlist the aid of powerful institutions in order to control survivors who leave.[62] As Susan Miller and Nicole Smolter argue, "practitioners and criminal justice system officials should recognize this behaviour as another kind of abuse from which victims need protection."[63] Too often, they do not.

Women with children are particularly vulnerable following separation. They are trying not only to recover from abuse but also to protect themselves and their children in a context of mandatory contact with the perpetrator.[64] In the immediate period after separation, a mother is likely to be required to share custody with her ex-partner.[65] From the moment of separation, access arrangements create opportunities for abusers to stalk and send threats, and mothers live with fear for the safety and well-being of their children when the children are in the care of their fathers.[66] A woman with children cannot readily leave town or hide from a perpetrator given these obligations: to refuse the father contact with the children is to be labelled by the court as a hostile, alienating parent.[67] As others have noted, "by asking women to do the impossible, that is, to control and manage men's violence, child protection systems ultimately fail to protect children" as well as their mothers.[68]

When such tactics are not successful in forcing women to return, men may turn to lethal violence, and may be deadly serious when they threaten, "If I can't have you, no one can." Coercive control "is more predictive of intimate homicide than the severity or frequency of physical violence."[69] Evidence from the few retrospective reviews of paternal filicide also suggests that "while physical forms of violence are evident in many cases, it may be that controlling behaviour is a particularly important part of separation filicides"[70] and children are at heightened risk of fatality at the time of separation from controlling fathers. As Heather Douglas notes, "the loss of opportunities for abuse that existed before the separation and the engagement in litigation that co-occur around the point of separation creates a kind of perfect storm."[71] Yet some continue to vociferously deny the risk of femicide so clearly illustrated in statistics.

THE GENDER PARITY IN VIOLENCE ARGUMENT

This backlash has taken the form of arguments that women are equally violent to men. The idea of gender symmetry in the use of violence in the home emerged from the pioneering study of Richard Gelles and Murray Straus. In 1975, they conducted the first nation-wide survey of family violence in the United States, which asked a simple question: "[I]n the past twelve months, have you used violence to settle disputes with your partner and, if so, exactly what kind of violence was used?"[72] Gelles and Straus found that the numbers of men and women who said they had experienced violence in their current relationships were almost equal. They were, however, quick to add caveats: men exhibited a higher degree of the most dangerous behaviour, and it was possible that some women were using violence in self-defence. (The survey did not ask about the context in which violence occurred.) More incendiary was the work of Suzanne Steinmetz. She argued battered husband syndrome was as much a problem as battered woman syndrome, and that this so-called fact had deliberately been obscured by feminist researchers.[73] These arguments have become the foundation of a powerful

anti-feminist men's rights movement that asserts violence against women is exaggerated, government money is wasted on shelters and other services, and custody should always be joint or with fathers.[74] Further, assumptions about mutuality of violence have undermined the intended impact of mandatory charging, as police often now charge both the man and the woman when they arrive at a domestic incident.[75]

While the gender parity argument has significant public support, the method employed in many of these studies is flawed. Most survey-based studies rely on variations of the Conflict Tactics Scale, but such scales may be unreliable, as men have been found to underestimate and underreport their own violence, while women underreport the violence perpetrated against them.[76] Further, even if all answers were honest on the face, surveys cap the number of violent incidents to be reported, cannot track escalation, and do not measure coercive, controlling behaviours or physical harm. Most women who have been abused report fighting back at some point and such behaviour would appear as mutual violence in surveys.[77] Michael Kimmel, a foremost researcher on masculinity and domestic violence, asserts that surveys err from the outset: they frame all incidents of intimate partner violence as arguments gone wrong, not as coercion or control.[78]

As Michael Johnson first noted, family conflict researchers who argue there is gender parity in violence begin from survey data, whereas researchers working from the perspective of violence against women begin with data from shelters. Family conflict researchers, he asserts, are therefore able to obtain information only about the limited types of violence that surveys reveal, which he terms situational couple violence. Johnson argues this can be perpetuated by men or women, erupts out of frustration, and can be mild, isolated, and sporadic.[79] It can also escalate over time and be dangerous, but it is not characterized by one partner dominating the other and it usually ends when one partner leaves the relationship. Even in this context, however, family conflict researchers themselves admit that men do more serious damage.[80] Coercive control, or what Johnson calls intimate partner abuse – the type of violence evidenced among women who seek shelter – does not show up in surveys. Women living with intimate terrorists do not agree,

and would not be allowed, to answer survey questions, so their stories are absent from family conflict data (and therefore from interpretations of domestic violence produced by such studies).

This leads such researchers to deny or ignore a basic fact: men are almost never in danger of being killed in domestic relationships with women, but femicide is a real and ever-present risk for women in the most controlling and violent relationships, and it is heightened at the time of separation. Such arguments – and the failure of police and wider society to distinguish between situational violence and coercive control – have devastating consequences for women, as Nicole Doucet's story illustrates.

FRAMING DOUCET'S STORY

As the following chapters illustrate, Nicole Doucet was dismissed by police as exaggerating the violence she faced; signs of intimate partner terrorism or coercive control were missed or ignored. She faced the "perfect storm" in the period after her separation from Michael Ryan.[81] After enduring fifteen years of verbal abuse and denigration, financial control, systematic isolation from her family and friends, being held by the neck and threatened at gunpoint, and being told she and her daughter would be killed and buried in the woods, she gathered the courage to leave the marriage. But she was being stalked and harassed by her husband and had gone into hiding with her child. He had stripped her of her financial assets, including defrauding her family, and repeatedly told her that no one would believe her if she claimed abuse. In the months since their separation, she had watched Michael Ryan charm both police and social workers – he called both, claiming she was an incompetent mother – and had been subject to his legal harassment. On multiple occasions she had sought but been denied help from the RCMP, who both discounted her profound fear and deemed her concerns "civil" and thus outside their jurisdiction. She was ill from stress and weighed less than 100 pounds. And she had an upcoming custody hearing in which she feared her abusive husband would be granted significant contact with, and perhaps custody of,

their child. It was in this context that she agreed to hire a hit man when she was called by an undercover RCMP officer. Doucet faced a real risk of femicide and the officer offered a solution to what seemed an insoluble problem. In this context, a question is raised: "Why are we prosecuting women we might otherwise be burying?"[82]

THE *LAVALLEE* CASE

Of course Doucet was not the first, and will not be the last, woman to fight back against her abuser. In 1990, the Supreme Court of Canada recognized battered woman syndrome in a case involving self-defence by an abused woman.[83] Angelique Lyn Lavallee was acquitted by jury after she shot her live-in boyfriend, Kevin Rust, in the back as he walked away from her after threatening he would "deal with her later."[84] Her lawyer, Greg Brodsky, made the bold decision to argue that expert evidence regarding battered woman syndrome was admissible in order to re-interpret the law of self-defence and to assert Lavallee's actions were "a final desperate act by a women who sincerely believed that she would [have been] kill[ed] that night."[85] Evidence of extensive abuse, and from psychiatrist Fred Shane that Lavallee suffered from battered woman syndrome, led to acquittal. The Crown appealed the decision to the Manitoba Court of Appeal, arguing, first, that the psychiatric evidence should not have been admitted and, second, that the trial judge's instructions to the jury regarding this evidence were inadequate.[86] In a two-to-one decision, the Court of Appeal agreed with the Crown, overturning the acquittal and ordering a new trial.[87] Brodsky and Lavallee sought leave to appeal to the Supreme Court of Canada, which decided to hear the case and reversed the decision of the appeal court, reinstating the acquittal entered at trial.[88]

Until *Lavallee,* evidence of previous abuse had not generally been admissible; the equal force requirement had punished women for using weapons to defend themselves against larger men; and the "reasonable" man standard had not contemplated the experience of an abused woman.[89] But the majority decision in *Lavallee,* written by Madame Justice Bertha Wilson, acknowledged that imminence could not be

required in the context of intimate partner violence. A battered woman could not be expected to wait for "an uplifted knife" to protect herself, as this would condemn her to what Wilson described as "death by instalment."[90] Wilson provided graphic detail about the abuse to which Lavallee had been subjected, engaged in explicitly gender-based analysis, and stressed the need for expert evidence to help dispel common myths about spousal abuse. She unpacked the underlying rationale of self-defence – preservation of one's life – and highlighted how the law disadvantaged women, particularly in the context of intimate partner violence: women often cannot fight back in the moment of attack, as they are greatly overpowered by their abusers. She asserted, "[T]he definition of what is reasonable must be adapted to circumstances which are, by and large, foreign to the world inhabited by the hypothetical 'reasonable' man."[91] She explicitly noted that section 34 of the *Criminal Code* – the self-defence provision – does not require imminence. Rather, it requires the accused to have a reasonable belief that her life is in danger and that she must take action to prevent death or grievous bodily harm.[92] Nor should a woman be required to retreat from her home: "[A] man's home may be his castle but it is also the woman's home, even if it seems to her more like a prison in the circumstances."[93]

Wilson asserted the jury needed help to understand the circumstances of a battered woman, and "expert evidence on the psychological battering of wives and common law partners must, it seems to me, be both relevant and necessary in the context of the present case. How can the mental state of the appellant be appreciated without it?"[94] In a public lecture presented in 1990 she declared, "[S]ome aspects of the criminal law in particular cry out for change; they are based on presuppositions about the nature of women and women's sexuality that, in this day and age, are nothing short of ridiculous"[95] and in retrospect, discussing *Lavallee* with her biographer, she noted her belief that "quite a number of aspects of the law ... needed to be rethought from a gender perspective."[96] In *Lavallee,* under the influence of Madame Justice Wilson, the Supreme Court of Canada demonstrated a willingness to reconsider the fundamental requirements of the law of self-defence by

focusing on its underlying rationale and one of its tragic, and tragically pervasive, contexts: intimate partner terrorism.

As Elizabeth Sheehy has amply illustrated in *Defending Battered Women on Trial,* despite precedent set in *Lavallee* the self-defence plea is often unsuccessful in court.[97] From 2009 to 2013, *R v Ryan* presented successive levels of court – first in Nova Scotia and culminating in the Supreme Court of Canada – with an opportunity to consider the context of intimate partner terrorism with regard to the defence of duress, which might have provided battered women with an alternative plea in cases in which they fought back against abusers. Unlike Lavallee, Doucet could not hope to claim self-defence; at the time of her alleged offence, a claimant was still statutorily required to be defending herself from an unlawful assault. In agreeing to hire a hit man, Doucet would not have been physically present during the hit. Duress, in contrast, applies when one is forced by the threats of another to commit a crime, normally against a third party, but in this case against the person allegedly creating the context of duress. In non-legal terms, the courts had to consider whether a woman – whom the law has recognized can shoot a man in self-defence when his back is turned because she cannot defend herself during a violent confrontation – is able instead to hire someone else to shoot him on her behalf when she has no alternative means of escape.[98] Would the context in which Doucet had acted, a context of extensive abuse, coercive control, and pervasive fear, first, be recognized and, second, be considered when determining the limits of duress? Would the courts contextualize the choices of a woman who was in circumstances so horrific she could see no other avenue of escape but to hire a third party to commit murder? Would the Canadian justice system live up to its duty to ensure that the lived reality of women is reflected in legal norms and values?[99]

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