

Torture is Torture is Torture: The “Cage” of Intimate Partner Violence Redefined as Torture

D R F R A N C E S E C H A P M A N ,
P H D , L L M , J D , B A *

ABSTRACT

Humans have always tried to control others' destinies by depriving them of liberty and forcing them to obey. The use of torture techniques on Prisoners of War (POWs) and hostages is as old as the use of coercion itself, and men obtaining power and control over women also has deep origins. It is not just physical control that keeps many battered women from leaving, but rather it is the result of the captivity resulting from that coercive control. If the experience of women who are experiencing severe intimate partner violence (IPV) could be reframed as a subject who is a hostage at home, we could reframe society's reactions to this violence. No more would women be shameful in their captivity, but rather seen as hostages who had been tortured by techniques like sleep deprivation. They would be the object of understanding, empathy,

* Dr. Frances E. Chapman is a Full Professor of Law at the Bora Laskin Faculty of Law, Lakehead University. Dr. Chapman obtained her JD and LLM degrees from Western University in 2002 and 2006, respectively, and her PhD from Osgoode Hall law school at York University in 2009. She is one of the founding members of the Bora Laskin Faculty of Law at Lakehead University and teaches criminal law and family violence. Thank you to Lakehead University for the 2025-2026 sabbatical and thank you to University College Dublin for the Fellowship received in 2025, without which this paper would not have been published. Thank you (always) to the survivors who shared their lived and living experiences.

and liberation, rather than having their experiences misunderstood and disregarded by the justice system.

Decades ago, theorists recognized this connection between the victim of IPV and hostages whose survival depends on the external controller who dictates the well-being of the captive. Anyone can be brought under the influence of coercive control, and there are a multitude of similarities between the two groups and the torture they withstand. As I have argued in the past, coercive control and IPV are particularly hard to classify and study because they call on the emotional, intellectual, and agency of individual actors. However, the brutality of what many women are experiencing at home is underestimated, and many agree that we understate harm by not recognizing IPV as a very serious crime. If the recent Supreme Court of Canada case of *Ahluwalia* can establish a new tort, perhaps new *Criminal Code* sections are also needed to address IPV.

Given the current IPV epidemic in North America, this paper seeks to explore calling IPV what it is: torture. First, statistics and terminology will be explored, then a history of IPV and brainwashing as torture. Next, I will examine coercive persuasion (and the more common term of coercive control) as torture, and the specific role of sleep deprivation on victims. I will then briefly examine the problem of evidence in our courtrooms and the ability of victims to present “well” in our traditional legal setting, and the fact that our *Criminal Code* has a provision for torture, which is limited only to official state actors. Finally, I will examine caselaw which uses the term torture, focusing on the American case of *State v Norman* that elucidates torture in the life of a battered woman. Understanding the history of this type of abuse of women will shed light on this phenomenon by naming the behaviour.

KEYWORDS: *torture, intimate partner violence, domestic violence, family violence, family law, criminal law, brainwashing, hostages in the home*

CONTENTS

I. Introduction.....	iv
II. Statistics and Terminology	x
III. A Historic Comparison of Torture, Brainwashing and IPV	xiv
IV. IPV as Torture.....	xix
A. Coercive Control as Torture.....	xix
B. Sleep Deprivation.....	xxvi
C. Evidence	xxx
D. Torture is a Crime, But Not for the Victim of IPV? xxxv	
V. Case Example	xliv
A. <i>State of North Carolina v Norman</i>	xliv
VI. Conclusion – How Can we Change our Perspective?	xlvi

I. INTRODUCTION

In short: Men who perceive social and economic changes as threats to their own sense of status or position – and therefore embrace a sense of injustice and victimhood while navigating feelings of shame at a perceived loss of manhood – more readily lash out with misogyny. It's a quick leap from shame and humiliation to anger and violence. There is good evidence that men who feel 'resentment toward their perceived loss of dominance and masculinity' may seek violent revenge to 'restore power and control.'¹

Humans have always tried to control others' destinies by depriving them of liberty and forcing them to obey.² The use of torture techniques on Prisoners of War (POWs) and hostages is as old as the use of coercion itself.³ Restoring power and control also has deep origins. However, it has been glibly stated that, "as far as international legal questions go, torture is an easy one. The prohibition of torture is one of the least controversial aspects of international human rights law and, indeed, of international law itself."⁴ The Vienna Declaration and Programme of Action from June 25, 1993, noted that the "World Conference on Human Rights emphasizes that one of the most atrocious

¹ Cynthia Miller-Idriss, *Man Up: The New Misogyny and the Rise of Violent Extremism* (Princeton: Princeton University Press, 2025) at 43.

² See Kathleen Taylor, *Brainwashing: The Science of Thought Control* (Oxford: Oxford University Press, 2004).

³ See Kathleen Taylor, *Brainwashing: The Science of Thought Control* (Oxford: Oxford University Press, 2004) at 13 notes the case of Thomas Cranmer in 1553 who was sent to the tower of London by Queen Mary where he was held until he would publicly recant his own religious beliefs and endorse Catholicism. Cranmer was subjected to months of psychological torture, and Taylor notes, at 14, that many of the techniques examined in modern brainwashing were already present. She notes, at 14, that he had been subjected to "uncertainty as a psychological weapon; exposure to a group of people with the beliefs to which the victim is to be converted; removing the victim from his or her former environment and from any chance to reinforce old beliefs by, for example, talking to friends; the threat of death, severe physical pain, or both; loneliness, lack of privacy, and the sense of being unable to control one's fate – all these were used quite deliberately by the priest in charge of Thomas Cranmer."

⁴ Gib van Ert, "Torture and the Supreme Court of Canada" (2014) 65 University of New Brunswick Law Journal 21 at 21.

violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities.”⁵ Even though most of us would agree that torture should be prohibited, it is remarkable that we still understand very little about the coercively persuaded and tortured individual.

Various government programs in the mid-20th century in North America experimented with drugs,⁶ torture, and other coercive and brainwashing techniques.⁷ The public was eager to hear about this phenomenon which reportedly persuaded 30-70% of American POWs in Korea to confess or to yield to anti-American sentiment and propaganda.⁸ These numbers were “high enough to shock Americans into embracing the brainwashing explanation.”⁹ Many were eager to discover more about this insidious blight on the American serviceman. However, many skeptics believed that the brainwashing scare was simply fostered by the CIA to make people believe that the superpowers had perfected overwhelming control

⁵ United Nations Human Rights, Office of the High Commissioner, “Vienna Declaration and Programme of Action” (25 June 1993) at para 55, online: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>> [perma.cc/L5LF4TN5].

⁶ See Edmund Bergler & Joost A.M. Meerloo, *Justice and Injustice* (New York: Grune & Stratton, 1963) at 111.

⁷ See Dominic Streatfeild, *Brainwash: The Secret History of Mind Control* (London: Hodder & Stoughton, 2006) at 65, and in particular at where Streatfeild notes that “[i]n its search for items that might eventually deliver ‘behaviour control [and] behaviour anomaly production’ MKULTRA sponsored 149 ‘subprojects,’ investigating hallucinogenic drugs, sensory deprivation . . . hypnotic agent programming . . . and subliminal perception . . . Other topics receiving research grants included handwriting analysis, manual magic tricks (for use in slipping drugs into foreign agents’ drinks), lip-reading, the chemical induction of stress, the stimulation of monkey brains with radio waves, brain concussion (experiments were conducted on cadavers in a specially prepared blast range ...) and many other techniques of so-called ‘black psychiatry.’”

⁸ Denise Winn, *The Manipulated Mind: Brainwashing, Conditioning and Indoctrination* (London: Octagon Press, 2000) at 1-2.

⁹ *Ibid* at 1-2. Even more shocking was the equally glaring fact that “few British POWs and few, if any, Turks, who suffered the same treatments, capitulated.”

over the enemy.¹⁰ Today, the study of those tortured in their own homes gets insufficient attention.

Descriptions of the torture of POW's sounds eerily familiar to the life that many abused women experience today. It is noted that:

the prisoner is subjected to unrelenting interrogation, sleep deprivation, an unhealthy and sparse diet, unsanitary conditions and personal humiliation. Throughout this process, the prisoner is not permitted any contact with the outside world. Any news the prisoner receives comes from his captors and is slanted to their needs or even manufactured from whole cloth. Physical torture is not uncommon, but its purpose is less to induce confessions than to further weaken the will to resist. The prisoner's guilt of unspecified offenses is taken for granted by everyone he sees. He finds it nearly impossible to maintain his self-image in the face of overwhelming rejection. Gradually, the prisoner's body gets weaker, his resistance fades, and he has great difficulty in focusing his mind. Hungry, tired, physically exhausted and mentally confused, the prisoner seeks any form of relief.¹¹

From a historical perspective, this process of torture is seen time and again in POWs, but it is worth noting that this research is almost exclusively on male prisoners. However, the comparison between the POW and the battered woman has not been lost on some, and abuse cases in the United States have compared IPV to techniques used on POWs in the Korean War.¹²

Lewis Okun also saw the links between prisoners and the abuse victim, and he coined the term "intimate terrorism"¹³ which he adopted from brainwashing literature to describe the battering of women.¹⁴ Okun compared woman battering to torture and used

¹⁰ *Ibid.*

¹¹ Alan W. Scheflin & Edward M. Opton, *The Mind Manipulators: A Non-Fiction Account* (New York: Paddington Press, 1978) at 91.

¹² *State v Norman*, 378 SE (2d) 8 (NC 1989) [*State v Norman*]. See below.

¹³ Michael P. Johnson, "Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence" (2006) 12:11 *Violence Against Women* 1003 at 1003. See also Evan Stark, "Commentary on Johnson's 'Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence'" (2006) 12:11 *Violence Against Women* 1019 at 1019 [Stark, "Commentary"].

¹⁴ Lewis Okun, *Woman Abuse: Facts Replacing Myths* (Albany: State University of New York Press, 1986). See also Frances E. Chapman, "Intangible Captivity: The Potential for a New Canadian Criminal Defense of Brainwashing and Its Implications for the Battered Woman" (2013) 28:1 *Berkeley J Gender L & Just* 30.

the term “conjugal terrorism” to depict the “threats and the larger pattern of control by which batterers constricted the victims’ decision-making powers.”¹⁵ Evan Stark picked up the history of this inquiry saying, “[c]ognitive psychologists in the late 1970s and 1980s tried to capture what these women were experiencing by comparing it to ‘coercive persuasion,’ brainwashing, and other tactics used with hostages, prisoners of war, kidnap victims, and by pimps with prostitutes. Although this view was largely ignored by academic researchers, the understanding of abuse as coercive control was developed in popular literature and incorporated at least implicitly ...”¹⁶ Many researchers forget this origin. Stark notes that it is difficult to conceptualize another setting other than a prison, institution, or a POW camp where someone so entirely controls everyday functions and routines.¹⁷

Stark has written extensively on the role of coercive control in the lives of women, and the comparison of the torture paradigm is insightful. He has noted that it is not just physical control that keeps many battered women from leaving, but rather it is the result of the captivity resulting from that coercive control.¹⁸ Stark has noted that if we were able to reframe the situation of a woman who is subject to Gender Based Violence (GBV) to one who is subjected to torture as “hostages at home,”¹⁹ we could reframe society’s reactions to this violence.²⁰ No more would women be shameful in their captivity, but rather seen as hostages who had been tortured by techniques like sleep deprivation. Rather, they would be the

¹⁵ Stark, “Commentary”, *supra* note 13 at 1021. Stark explains, at 1021, that coercive control (CC) is involved in “exploitation and deprivation as well as its links to ‘psychological abuse.’ If most battered women experience CC rather than domestic violence, this would explain why ‘abuse’ continues even when couples separate, why ‘minor’ violence can have significant consequences, why battered women are entrapped and develop a unique problem profile.”

¹⁶ Evan Stark, *Coercive Control: The Entrapment of Women in Personal Life* (New York: Oxford University Press, 2007) at 12 [Stark, *Coercive*].

¹⁷ Stark, *Coercive*, *supra* note 16 at 14.

¹⁸ Stark, *Coercive*, *supra* note 16.

¹⁹ Stark, *Coercive*, *supra* note 16 at 204.

²⁰ Stark, *Coercive*, *supra* note 16 at 204.

object of understanding, empathy and liberation.²¹ As I have argued before,²² coercive control and Intimate Partner Violence (IPV) are particularly hard to classify and study because they call on both the emotional and intellectual.²³ The brutality of what many women are experiencing at home is underestimated, and Cynthia Miller-Idriss notes that we “understate the extent of the harm by failing to classify intimate partner and sexual violence as hate crimes.”²⁴ Lewis Okun argued that anyone can be brought under the influence of coercive control, and there are a multitude of similarities between the two groups and the torture they withstand.²⁵ Most recently, the majority of the Supreme Court of Canada (SCC) in *Ahluwalia v Ahluwalia* stated that there is “no disagreement between the parties that intimate partner violence is a pernicious social ill deserving of the full attention of the law. The Court of Appeal was no doubt

²¹ Stark, *Coercive*, *supra* note 16 at 206.

²² Frances Chapman, “At the Intersection of Discrediting, Degradation, Denigration: Coercive Control, Parental Alienation and ‘Institutional Gaslighting’” (2024) 44:1 *Women’s Rights Law Reporter* 52; Frances Chapman, “Coercive Control, Parental Alienation and Institutional Gaslighting: Hyper-Vigilant Mothers, Unregulated Wives and Court Imposed ‘Feminized Irrationality’” (2023) 38:2 *Wisconsin Journal of Law, Gender and Society* 135; See Frances E. Chapman, “Intangible Captivity: The Potential for a New Canadian Criminal Defense of Brainwashing and Its Implications for the Battered Woman” (2013) 28:1 *Berkeley J Gender L & Just* 30.

²³ Taylor, *supra* note 3 at 98.

²⁴ Miller-Idriss, *supra* note 1 at 54.

²⁵ See Okun, *supra* note 14 at 87 where he notes that Serum draws upon the Bettelheim studies of inmates in German prison camps, and finds that there are 10 common features among battered women and camp survivors. He notes that they include: “1) guilt feelings, with an attendant sense of deserving the victimization; 2) significant loss of self-esteem; 3) detachment of emotion from incidents of severe violence, and extreme reactions to trivial incidents; 4) failure to observe the controller’s rules because of the arbitrariness of punishment; 5) extreme emotional reactions; 6) difficulty planning for the future and delaying gratification; 7) fear of escaping the coercive control situation; 8) child-like dependency on the controllers, and identification with them; 9) imitation of controllers’ aggressiveness, and adoption of their values; 10) maintenance of the hope that the controller is kind and just.”

right to say that intimate partner violence represents the ‘cancer of domestic relationships.’”²⁶

This paper seeks to call IPV what it is: torture. First, I will engage in a discussion on the statistics behind IPV and a discussion of the terminology involved to set up the background for a reconceptualization of torture. Next, a history of IPV and brainwashing as torture will be explored. I will also examine coercive persuasion (and the more common term of coercive control) as torture, and the specific role of sleep deprivation on victims. I will then briefly examine the problem of evidence in our courtrooms and the ability of victims to present “well” in our traditional legal setting for many abuse victims. Throughout this section, I will note the “false consensus bias” theory and the “just world theory” to try to explain these inconsistencies. Next, I will argue the fact that our *Criminal Code*²⁷ has a provision for torture, but it is limited to official state actors. Next, I will examine case examples of battering as torture. *R v Dodd* is one of those few Canadian cases that, in sentencing, referred to the abuse as torture, and I will examine the case of *State v Norman*²⁸ that elucidates torture in the life of a battered woman. Understanding the history of the torture of women will shed light on this phenomenon by naming this phenomenon and behaviour, which is very much a particular brand of torture.²⁹

²⁶ *Ahluwalia v Ahluwalia*, 2026 SCC 16 at para 3 [*Ahluwalia*] citing the Ontario Court of Appeal 2023 ONCA 476 at para 43.

²⁷ *Criminal Code*, RSC 1985, c C-46.

²⁸ *State v Norman*, *supra* note 13.

²⁹ For the purposes of this paper, women abused by men will be the focus (because the majority of violence happens by a man against a woman) even though there is ample evidence that those in same sex relationships suffer coercive control and abuse. This is also an acknowledgement that although there is female violence against a male partner, this paper will not consider those victims. As noted by the Supreme Court in *Ahluwalia*, *supra* note 26 at para 122, IPV’s “impact is shaped by gender and context. While it can affect people of all genders, any effort to confront it seriously – and to respond in a manner consistent with the principle of substantive equality – must begin by recognizing that women are overwhelmingly those most often harmed by their partners. Intimate partner violence is not confined to women harmed by male partners, but it remains a phenomenon that is ‘profoundly gendered.’

II. STATISTICS AND TERMINOLOGY

Shocking headlines about IPV are almost a daily occurrence. In 2024, Manitoba headlines included “Man Killed 3 Members of McCreary Family in ‘Horrific Act of Intimate Partner Violence’: RCMP” and “Survivor had Protection Order Against Marlon Glover, 41, Who Killed Himself After Triple Homicide.”³⁰ Almost every province and territory has similar atrocities. Statistics Canada references the World Health Organization in that IPV is, “a major global public health concern, as it affects millions of people and can result in immediate and long-lasting health, social and economic consequences. IPV impacts people of all genders, ages and socioeconomic, racial, educational, ethnic, religious and cultural backgrounds.”³¹ In Canada and around the world, survivors may be, “within a marriage, common-law or dating relationship; regardless of the gender and sexual orientation of the partners; at any time during a relationship and even after it has ended; whether or not partners live together or are sexually intimate with one another.”³² This violence is overwhelmingly perpetrated against women by men.³³ Statistics Canada notes that 44% of women and girls who have a relationship with an intimate partner (approximately 6.2 million women aged 15 and over) have “reported experiencing some kind of psychological, physical, or sexual abuse in the context of an intimate relationship in their lifetime (since the age of 15).”³⁴ Women are more likely to experience the “most severe” forms of IPV including being made to

In Canada, both police-reported and self-reported data indicate that victims of intimate partner violence are disproportionately women.”

³⁰ Mike Arsenault & Arturo Chang, “Man Killed 3 Members of McCreary Family in ‘Horrific Act of Intimate Partner Violence’: RCMP”, *CBC News*, (21 August 2024), online:

<<https://www.cbc.ca/news/canada/manitoba/rcmp-mccreary-triple-homicide-update-august-21-1.7300732>> [perma.cc/976M-G9B6].

³¹ Government of Canada, “Intimate partner violence” (last modified 5 August 2025), online: <canada.ca/en/women-gender-equality/gender-based-violence/intimate-partner-violence.html> [perma.cc/8CJJ-C29D].

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

perform sex acts they did not want to perform (8% versus 1%), being confined or locked in a room or other space (3%), being forced to have sex (10%), and being choked (7%).³⁵ Although IPV is well-known to be vastly underreported, in 2022, 117,093 Canadian victims of intimate partner violence aged 12 years and older reported their abuse.³⁶

No matter the term “domestic violence,” (DV) “intimate partner violence” (IPV) or “domestic abuse,” (DA), IPV may include a combination of physical, sexual, emotional, financial, and psychological abuse, usually directed against women. For that reason, the term intimate partner violence and domestic violence will be used throughout this paper, but will draw on the terminology of coercive control and conjugal terror and will include “physical, sexual, and emotional abuse, financial control, implicit or explicit threats to the partner or ex-partner, and against their children, belongings, or pets.”³⁷ Taking into account unreported abuse, the WHO and others are estimating that as many as one in three women have experienced DV.³⁸ Clearly, this level of abuse is epidemic. As Justice Karakatsanis of the SCC noted in her decision of *Ahluwalia*, “Canada continues to face a crisis of intimate partner violence.”³⁹

The definition of torture is more elusive. As noted by Jeremy Wisniewski, “part of the problem, as we will see, is that we really often *don't* know what we're talking about. The term ‘torture’ is as debatable as its practice.”⁴⁰ From a United Nations Perspective,

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ See Canada, Parliament, House of Commons, Standing Committee on Justice and Human Rights, *The Shadow Pandemic: Stopping Coercive and Controlling Behaviour in Intimate Relationships: Report of the Standing Committee on Justice and Human Rights*, 43rd Parl, 2nd Sess (April 2021) (Chair: Iqra Khalid) at 6.

³⁸ Canada, Parliament, House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 43rd Parl, 2nd Sess (4 February 2021) (Chair: Iqra Khalid), Testimony of Genieve Isshak, Clinical Director of Residential and Community Services, Hiatus House at 3.

³⁹ *Ahluwalia*, *supra* note 26 at para 250.

⁴⁰ Jeremy Wisniewski, *Understanding Torture* (Edinburgh: Edinburgh University Press, 2010) at 4.

Article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* states that:

[f]or the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.⁴¹

Although we have a Canadian *Criminal Code* definition of "torture," which the annotations note is a "complete definition," there are few specifics in the legislation.⁴² The section merely states that torture, "means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for the purpose of obtaining, punishing or intimidating a person, except that which is permitted by "lawful sanctions."⁴³ It is interesting that only physical or mental pain is included without reference to emotional, spiritual, financial, or psychological harm, and there is no definition of "mental" pain or suffering. There is also no mental element "specified, beyond that inherent within the definition of torture."⁴⁴

The SCC weighed in on the definition of torture from an immigration and refugee perspective using the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or*

⁴¹ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987), art 1, online: <<https://www.ohchr.org/sites/default/files/cat.pdf>> [<https://perma.cc/DW88-2N53>]. A full discussion of International law is beyond the scope of this paper.

⁴² *Criminal Code*, RSC 1985, c C-46 s 269.1. See Martin, John C et al., *Martin's Annual Criminal Code* (Toronto: Canada Law Book, 2025). This section will be discussed further below.

⁴³ *Ibid.*

⁴⁴ CED 4th, *Criminal Law-Offences*, "Torture: Mens Rea" at § 1947 (April 2026).

Punishment, 1984 (CAT)⁴⁵ in the 2002 case of *Suresh v Canada* (Minister of Citizenship & Immigration).⁴⁶ The CAT defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁴⁷

This again excludes what is done in the guise of “lawful sanctions.” The SCC case examined whether a refugee could be deported to a country that would inflict torture. The SCC noted that torture is defined in CAT and in our *Criminal Code*, “in Art. 1 of the CAT as including the unlawful use of psychological or physical techniques to intentionally inflict severe pain and suffering on another, when such pain or suffering is inflicted by or with the consent of public officials. A similar definition of torture may be found in s. 269.1 of the *Criminal Code*.”⁴⁸

The United Nations Special Rapporteur on Torture identified gendered perspectives on torture. Special Rapporteur Juan Méndez

⁴⁵ *Convention against Torture*, *supra* note 42.

⁴⁶ *Suresh v Canada* (Minister of Citizenship & Immigration), 2002 SCC 1 [*Suresh v Canada*].

⁴⁷ *Convention against Torture*, *supra* note 42 at art 1. A full discussion of international law and the implementation of the Immigration and Refugee Protection Act (SC 2001, c 27) is beyond the scope of this article.

⁴⁸ *Suresh v Canada*, *supra* note 47 at para 43. Bill C-242, *An Act to Amend the Criminal Code (inflicting torture)*, 1st Sess, 42nd Parl, 2016 (was introduced in the House of Commons, was introduced as a private members Bill, did not proceed after the first reading), online: <<https://www.parl.ca/LegisInfo/en/bills?keywords=Bill%20C-242&parlsession=42-1>> [<https://perma.cc/3R6N-226K>]. See also Jackie Jones, Jeanne Sarson & Linda MacDonald, “How Non-State Torture is Gendered and Invisibilized: Canada’s Non-Compliance with the Committee Against Torture’s Recommendations” in Macarena Sáez & Juan E. Méndez, eds, *Gender Perspectives on Torture: Law and Practice* (Washington, DC: Center for Human Rights & Humanitarian Law: Anti-Torture Initiative, American University Washington College of Law, 2018).

defined gender-based violence as a form of torture under CAT, and it was a finding that:

[g]ender-based discrimination includes violence directed against or disproportionately affecting women. Prohibited conduct is often accepted by communities due to entrenched discriminatory perceptions while victims' marginalized status tends to render them less able to seek accountability from perpetrators, thereby fostering impunity. Gender stereotypes play a role in downplaying the pain and suffering that certain practices inflict on women, girls, and lesbian, gay, bisexual and transgender persons. Furthermore, gender intersects with other factors and identities, including sexual orientation, disability and age, that may render a person more vulnerable to being subjected to torture and ill-treatment (general comment No. 2). Intersectional identities can result in experiencing torture and ill-treatment in distinct ways. The torture protection framework must be interpreted against the background of the human rights norms that have developed to combat discrimination and violence against women.⁴⁹

Even though GBV was recognized as leading to torture, especially for those falling into intersectional realms, little has come of this finding in a practical way. However, in 2026, the SCC found for the recognition of a new tort of IPV, so this may lead the way to other reconceptualization opportunities.⁵⁰ Ms. Ahluwalia is quoted by the SCC as describing her abuse as “torture.”

III. A HISTORIC COMPARISON OF TORTURE, BRAINWASHING AND IPV

In woman abuse, the process involves a male captor (the batterer) breaking a woman's spirit and bending her to his will. That the purpose and result of woman abuse may not be consciously premeditated, while thought reform was a carefully conceived procedure, is irrelevant to the aim and usefulness of the present discussion. What is important here is the chilling overall similarity of woman-battering to brainwashing.⁵¹

There has been relatively little research on the role of brainwashing in the context of criminal law and almost nothing

⁴⁹ Juan E. Méndez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UNHRC, 31st Sess, UN Doc A/HRC/31/57 (5 January 2016) at para 9.

⁵⁰ Ahluwalia, *supra* note 26.

⁵¹ Okun, *supra* note 14 at 132.

from a family law perspective; indeed, little has been written on brainwashing since the cases of Patty Hearst and cult indoctrination in the 1970's.⁵² Some question the concept, and "view it as a pejorative term for the absorption of ideas disdained by the majority" and the term is wrongly reserved for influences of which we disapprove.⁵³ Given the current climate of religious extremism, terrorist organizations and domestic violence, this approach is short-sighted. There are many examples using this concept within the home. Okun notes that there is a "shocking similarity between the specific procedures and techniques of thought reform and woman abuse."⁵⁴ In both situations, a male captor or set of captors subjects the prisoner to enforced confinement involving a regimen of physical brutality and violence, imposed physical hardship, dehumanization, and verbal and emotional abuse, and:

escape is either literally impossible, or very nearly so, or else escape is the most dangerous of all the prisoner's alternatives. Throughout both the thought reform and woman abuse ordeals, the captor portrays himself as utterly laudable, worthy, and inviolable, while demonstrating to the victim that she or he is entirely guilty, worthless, and eminently violable.⁵⁵

Okun notes that it has become "compellingly – though terrifyingly – obvious that some conjugal relationships or families resemble a prison or concentration camp or torture chamber more than they exemplify the usual positive connotations of the words 'couple' or 'family.'"⁵⁶ This link between battering and torture is unsettling to many. Ruth Jones advocates that many coercively

⁵² With the notable exception of myself. See Frances E. Chapman, "Intangible Captivity: The Potential for a New Canadian Criminal Defense of Brainwashing and Its Implications for the Battered Woman" (2013) 28:1 Berkeley J Gender L & Just 30.

⁵³ Ida-Gaye Warburton, "The Commandeering of Free Will: Brainwashing as a Legitimate Defense" (2003) 16:1 Cap Def J 73 at 78.

⁵⁴ Okun, *supra* note 14 at 132.

⁵⁵ *Ibid.*

⁵⁶ *Ibid* at 136. Okun notes, at 137, that awareness of this reality for many is "important to halting domestic abuse, however. If blinded by the positive connotations of family to its potential for torture and coercive control, helpers and policy makers will be, at best, ineffective in halting family violence, and they more likely will unintentionally help perpetuate abuse."

controlled women do not fit within the current discourse on battered women because the studies “suffer from one important flaw: the empirical data upon which they are based ignore battered women who are not actively seeking help.”⁵⁷ This is an important note on the research because the battered woman may not see any means of escaping her situation and may not actively seek assistance.

Isolation is also a key component of this cycle of violence, filled with “jealous surveillance, such as stalking, eavesdropping, and intercepting letters or telephone calls, which results in solitary confinement of the battered woman within her home.”⁵⁸ Again, these moves are not made in large steps but rather in “small symbolic concession[s]” which “reluctantly made . . . slowly and imperceptibly destroy their ties to others.”⁵⁹ Some have noted that the relationship of the battered woman and her abuser is much more difficult to navigate than that of the hostage and hostage-taker. In the hostage situation, the hostage is “taken prisoner by surprise. She initially knows nothing about the captor, or she regards him as an enemy . . . In domestic battering, by contrast, the victim is taken prisoner gradually, by courtship.”⁶⁰ This initial attempt at power is seen as a “sign of passionate love. She may at first feel flattered and comforted by his intense interest in every aspect of her life. As he becomes more domineering, she may minimize or excuse his behaviour, not only because she fears him but also because she cares for him.”⁶¹ This added layer of complexity takes torture to a new and frightening level.

⁵⁷ Ruth Jones, “Guardianship for Coercively Controlled Battered Women: Breaking the Control of the Abuser” (2000) 88 Geo. L.J. 605 at 613.

⁵⁸ Judith Lewis Herman, *Trauma and Recovery: The Aftermath of Violence – From Domestic Abuse to Political Terror* (New York: BasicBooks, 1992) at 80.

⁵⁹ *Ibid* at 80.

⁶⁰ *Ibid* at 82.

⁶¹ *Ibid.* Herman also notes, at 83, that since many “women derive pride and self-esteem from their capacity to sustain relationships, the batterer is often able to entrap his victim by appealing to her most cherished values. It is not surprising, therefore, that battered women are often persuaded to return after trying to flee from their abusers.”

The debilitating results of mind control through battering include techniques such as described above.⁶² Researchers note that “cultic” systems are used as “an omnipotent master demanding self sacrifice, social isolation, threat of harm, confusion and guilty, and ‘love’ contingent on actions lying, and limiting of options. The dominant techniques of abuse are implemented by what are known as the “debility, dependency, and dread.”⁶³ B. Marie Brady explains that, with the use of debility, dependency and dread the battered person experiences “paralyzing fear, terror, constant anxiety, apprehension, vigilance, feelings of impending doom, which result in panic disorder, major recurring depression, dysthemic disorder, and somatization disorder, in addition to physical trauma.”⁶⁴ Okun summarizes the tools used by the batterer as:

imprisonment or confinement; social isolation; beatings; torture; starvation or malnourishment; sleep deprivation; threats of murder or of torture; random and unpredictable leniency, coupled with equally unpredictable punishment; humiliation and revilement; complete prescription of the use of time and space; manacling or other forms of bondage; coerced false confessions, and other methods of directly inducing guilt such as denunciations of the victim to authorities or significant others.⁶⁵

Okun explains that this isolation increases suggestibility and dependency.⁶⁶ However, unlike the POW and the research surrounding their captivity, the battered woman is studied in a very different way. He notes that when it comes to the POW and brainwashing, no one questions these intense techniques, nor do they judge why that individual succumbed to this pressure. He notes that “[n]o hypothetical attribution of masochism or weakness is made against prisoners who succumbed to brainwashing

⁶² *Ibid.*

⁶³ I. E. Farber, Harry F. Harlow & Louis Jolyon West, “Brainwashing, Conditioning, and DDD (Debility, Dependency, and Dread)” (1957) 20 *Sociometry* 271 at 273.

⁶⁴ B. Marie Brady, “America in Crisis: Mind Control/Ritual Trauma/Battered Woman Syndrome and Family Violence” (2000) 92 *J. Fam. and Consumer Sciences* 17 at 18.

⁶⁵ Okun, *supra* note 15 at 87.

⁶⁶ *Ibid* at 88.

techniques. Rather, the brainwashing process is taken as sufficient explanation for its psychological impact.”⁶⁷

It is not difficult to categorize the acts perpetrated on some battered women as torture. Okun has noted that:

[s]ome torture techniques used against battered women are chillingly creative and sophisticated in their morbid, sadistic fashion. Apart from beatings, common methods of torture in woman abuse include cigarette burns; twisting limbs to, or past, the breaking point; submerging the victim to near drowning; choking and suffocating; bamboo or wood chips under the fingernails; mutilation with knives or sharp instruments; branding; introducing painful irritants to the eyes. All of these techniques are reminiscent of espionage fiction or of factual accounts of torture under political repression. To shelter workers, American homes at times seem to form a sort of ‘Gulag Archipelago’ in which women and children are subjected to myriad atrocities.⁶⁸

Okun also describes the sexual abuse that forms part of the torture of battered women. He argues that battered women are “frequently subjected to conjugal rape and/or other sexual abuses that amount to physically debilitating torture.”⁶⁹ Okun has noted the technique of the “creation of disunity and distrust among prisoners by use of informants” which “has its analogies in woman abuse.”⁷⁰ He notes that the “batterer may play the children’s interests against those of the battered woman in order to foment divisiveness.”⁷¹ Okun describes that, for example, “the batterer may assault or sexually molest the children in order to prove that their mother is an inadequate protector to the distrusted. Children can be enticed or coerced by the batterer to act as informants – even as false witnesses – against the battered woman. Similarly, the battered woman can be coerced into selling out her children’s interests in favour of protecting herself.”⁷² Going beyond the

⁶⁷ *Ibid* at 88. See Frances E Chapman, “She ‘Enjoyed the Fight and Stoked the Fire’ - Fighting Back against The myth of ‘Mutual Violence’ In Intimate Partner Violence” (2026) (unpublished manuscript, in progress; manuscript available upon request).

⁶⁸ Okun, *supra* note 14 at 123.

⁶⁹ *Ibid.*

⁷⁰ *Ibid* at 125.

⁷¹ *Ibid.*

⁷² *Ibid.*

battering situation envisioned by Walker, these acts are arguably torture. The battering of women has begun to be recognized as a world-wide human rights abuse.

No one questions why a POW is controlled, but the battered woman is held to a different standard and understanding is not extended to her torture. Although some of these ideas have evolved in the last decades, many of these biases remain today. Perhaps one of the most troubling explanations for why the world is shocked by the indoctrination of POW's but sees battering as acceptable is that POW's were heavily studied in the last century because they "could be converted to Communism" while the repression of women "may serve to support aspects of social control (e.g., the traditional family, male dominance, and other aspects of the American way of life)."⁷³ Wife battering serves an important, and controlling purpose.

IV. IPV AS TORTURE

A. *Coercive Control as Torture*

A woman wears the same outfit every day, rarely goes out, and continually paces back and forth in a small space. Imagine how hard it would be to explain her behavior if you were unable to reveal that the woman is confined in a jail cell. The domestic violence field faces a similar predicament when it tries to account for how battered women behave without identifying their 'cage.' . . . it is unsurprising that more attention is paid to the personality and behavior of victims than to what perpetrators do. Start with the cage, and everything changes. Suddenly, seemingly discrete, unrelated behaviors and effects fall into place. The iron rods—a barrage of assaults, a locked door, missing money or a distributor cap, rules for cleaning, a mysterious text message, a timer set at the telephone—are now recognized as 'bars.'⁷⁴

The majority of the SCC in *Ahluwalia* finally recognized the insidious nature of coercive control saying that, "[c]oercive and controlling conduct has been deemed 'the most serious type of

⁷³ Mary Romero, "A Comparison Between Strategies Used on Prisoners of War and Battered Wives" (1985) 13:9-10 *Sex Roles* 537 at 545.

⁷⁴ Stark, *Coercive*, *supra* note 16 at 197-98.

violence in the family law context”⁷⁵ and “objectively has the effect of subordinating an intimate partner to the other’s control.”⁷⁶ At its most basic, coercive control denotes an “ongoing pattern of domination by which abusive male partners primarily interweave repeated physical and sexual violence with intimidation, sexual degradation, isolation and control” resulting in a form of entrapment what can resemble that of a “hostage” in the way in which it harms “dignity, liberty, autonomy and personhood as well as to physical and psychological integrity.”⁷⁷ However, unlike a hostage situation, it is remarkable the level of control that is possible given the “unique access intimacy affords perpetrators to personal information.”⁷⁸ Thus, the abuser has information and restrictions about finances, food, resources, medicine, etc., that may not otherwise be available, and may make the woman choose between her safety and that of her children.⁷⁹ Stark defines the coercion as, “the use of force or threats to compel or dispel a particular response. In addition to causing immediate pain, injury, fear, or death, coercion can have long-term physical, behavioral, or psychological consequences” and control as the obedience required on a day-to-day basis (whether or not the abuser is physically present) which deprives victims of “vital resources and support systems, exploiting them, dictating preferred choices and micro-

⁷⁵ Ahluwalia, *supra* note 26 at para 119 citing the Department of Justice, *Legislative Background: An Act to Amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to Make Consequential Amendments to Another Act* (Bill C-78 in the 42nd Parliament) (2019) at 24.

⁷⁶ Ahluwalia, *supra* note 26 at para 120.

⁷⁷ Evan Stark, “Re-presenting Battered Women: Coercive Control and the Defense of Liberty” in Maryse Rinfret-Raynor et al., eds, *Violence Against Women: Complex Realities and New Issues in a Changing World* (Quebec: Presses de l’Université du Québec, 2012) at 7 [Stark, “Re-presenting”].

⁷⁸ *Ibid* at 8.

⁷⁹ *Ibid* at 9. Stark, calls this choice between herself and her child, at 9, the “battered mother’s dilemma.” Stark, *Coercive*, *supra* note 16 at 4, also calls this control “microregulation” including things like transportation, resources, and things such as how to “dress, cook, clean, socialize, care for their children, or perform sexually.”

managing their behavior by establishing ‘rules’ for everyday living.”⁸⁰

This lack of control in one’s life can be described as terror. Stark has noted that “woman battering is qualitatively different than other forms of abuse or assault in that it extends over time and through social space and exacts a significant toll that cannot be explained by injury or violence.”⁸¹ However, many battered women today prefer the term “battered woman survivor” and there is a

⁸⁰ Stark, “Re-presenting”, *supra* note 78 at 8 and 11. See Robert Nonomura et al., *Family Violence & Family Law Brief: Coercive Control and Family Law*, Issue 3 (London, Ontario: Centre for Research & Education on Violence Against Women & Children, 2021) at 4, that the “rules” have also changed during the COVID-19 pandemic and theorists have found that the lockdown has been “weaponized” through “misinformation about the virus to frighten and control women and/or children; pressure to alter existing access arrangements, including refusal to return children after an access visit; micro-regulation of partner’s compliance with COVID-19 guidelines; preventing access to medical advice and service, citing exposure concerns.” See also Khalid, *Shadow Pandemic*, *supra* note 37 at 13 where it is noted that “[w]hen your home is not a safe place to be, stay at home orders put you at greater risk of violence.” See also Jennifer Koshan, Janet Mosher & Wanda Wiegiers, “COVID-19, the Shadow Pandemic, and Access to Justice for Survivors of Domestic Violence” (2021) 57:3 Osgoode Hall Law Journal 739 [Koshan, Mosher & Wiegiers] who note at 747, that “[r]eports from around the globe to date indicate increases in the number of calls for assistance related to domestic violence generally ranging from 10–50 per cent, with a 25–30 per cent increase being common in many countries.” They also note, at 748, that in Canada frontline domestic violence organization have reported a “20–30 per cent increase in rates of domestic violence in some regions in Canada, and in the case of one shelter in the Greater Toronto Region, a 400 per cent increase in calls for assistance.” COVID has also left many women vulnerable to being thrown on the streets with no assistance and Koshan, Mosher & Wiegiers note that, “variety of other COVID-19 specific tactics of power and control have also been reported: the use of misinformation about the virus to frighten and control victims; the withholding of necessary safety items, such as hand sanitizer and disinfectants; preventing access to medical advice and services by invoking exposure to the virus; the withholding of economic support; forbidding handwashing; denying access to communication methods; and preventing women from leaving home to work citing infection concerns, or accusing women of attempting to infect them if women have left the home for work.”

⁸¹ Stark, “Commentary”, *supra* note 13 at 1020.

growing literature on the “active efforts” of these survivors.⁸² Stark has commented that coercive control “is the most common context for abuse. It is also the most devastating, largely because it targets women’s personhood and capacity for independent decision-making as well as their physical integrity and can instill paralyzing levels of fear, loss of self-esteem, and dependence, even after couples separate.”⁸³ It has been well documented the effect and paralysing fear caused by this type of control.

Stark has noted that minimization is a common tool, and survival technique, characteristic of one under control. Control can involve isolation from supports, deprivation of basic needs, monitoring, controlling (money, food, etc.), humiliation, threats to children or pets, threats of exposure (LGBTQ2S+ status), damages to property and forcing participation in criminal acts or even child abuse.⁸⁴ These factors must impact the day-to-day existence of the victim through changes in physical or mental health, or changes in the way one may parent. These controls can be exerted by a family member (including a romantic partner or someone they live with such as a parent), but is extremely difficult to prove.⁸⁵ Ironically,

⁸² Elizabeth M. Schneider, “Feminism and the False Dichotomy of Victimization and Agency” (1993) 38 N.Y.L. Sch. L. Rev. 387 at 390. Schneider has noted, at 390, that “[r]esource and advocacy materials on battered women now emphasize the human strengths and capacities of battered women who struggle to survive, protect themselves and their children, and keep their families functioning.”

⁸³ Evan Stark, “Rethinking Custody Evaluation in Cases Involving Domestic Violence” (2009) 6:3-4 Journal of Child Custody 287 at 307.

⁸⁴ Andrea Silverstone, “Coercive Control Brief” (last visited 26 June 2026) at 4, online (pdf): ourcommons.ca/Content/Committee/432/JUST/Brief/BR11112021/br-external/SagesseDomesticViolencePreventionSociety-e.pdf [perma.cc/KHG3-WR83]. For more information on same-sex relationships and coercive control see Evan Stark & Marianne Hester, “Coercive Control: Update and Review” (2019) 25:1 Violence Against Women 81 at 91 including more information on Canadian Indigenous Two Spirited people at 92.

⁸⁵ *Ibid* at 4. Silverstone outlines, at 5, evidence which can document coercive control as including, “Copies of emails, text messages or voicemail recordings, photographs of injuries or damage to property; Evidence of

while many say that coercive control is “less harmful” to the victim because there often lacks a physical element, the research has in fact shown that relationships with coercive control result in greater injuries, more frequency, and more severe violence and are “less likely to desist.”⁸⁶

Coercive control by an abuser can be just as devastating as more traditional forms of battering. Taylor notes that:

a skilled abuser can use every trick in the influence technician’s repertoire, from authority to commitment traps to sheer brute force, building up even an initially small inequality in power into an imbalance so huge that the abused partner in effect becomes a slave ... All that is required is the imbalance of need whereby the victim rates her partner’s ‘love’ more highly than he rates hers, and is willing to compromise in order to keep him happy ... The abuser will take care to act as if he is superior in whatever domain she respects: if she is proud of her intelligence, he will be cleverer; if of her salary, his will be bigger (or else he’ll find a good reason why it isn’t).⁸⁷

Lenore Walker also discussed the use of control on the battered woman. She described the subjects in her study as indicating they had “ways they learned to keep control of their own minds” even if the abuser was controlling their body. They would placate the abuser to spare themselves, but for “some of the women who kill, however, their violence is a desperate attempt to keep him from

financial abuse may be shown by bank statements or a diary of day to day experiences; They may be able to show that they have lost contact with friends and family members, left their employment or withdrawn from clubs or other activities; Their medical records may show that their abuser accompanies them to appointments; It is common for abuser to make or threaten to make false allegations about their victims to police, social services, immigration authorities or to friends and family. These threats or allegations are part of coercive control and can also be reported to the police.” See *Shadow Pandemic*, *supra* note 37 which quotes Yasmine Youssef, the National Manager of Nisa Homes, at 4, notes that a view of coercive control “must also be done from an intersectional lens that takes into account the different lived experiences of marginalized women, since statistics show that these women have a higher chance of experiencing violence.” It is clear that, as noted in the report at 4, that “marginalized women have a higher risk of experiencing violence.”

⁸⁶ Silverstone, *supra* note 85 at 6.

⁸⁷ Taylor, *supra* note 3 at 86-87.

gaining total control of their minds, too.”⁸⁸ These attempts at power domination lead to a situation which can be described as torture. In their *Declaration on the Elimination of Violence Against Women* Article 1, the United Nations declared in 1993 that violence against woman is “any act of gender-based violence that results in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivations of liberty, whether occurring in public or private life.”⁸⁹

Stark notes that the American Medical Association (AMA) defined abuse as having “coercive behavior that may include repeated battery and injury, psychological abuse, sexual assault, progressive social isolation, deprivation, and intimidation perpetrated by someone who was or is involved in an intimate relationship with the victim.”⁹⁰ Stark recognizes that despite this recognition of something akin to brainwashing in the life of the battered woman, “coercive control remains marginal to mainstream thinking. It is rarely acknowledged in policy circles, has had almost no impact on domestic violence policing or criminal law, and commands no special funding.”⁹¹ Aptly, Stark notes that so many basic rights are taken away.⁹² Stark notes that coercive control “entails a malevolent course of conduct” that imprisons women by violating them physically, denying “respect and autonomy,” enforcing isolation and/or “depriving them of social connectedness

⁸⁸ Leonore Walker, *The Battered Woman Syndrome* (New York: Springer, 1984) at 50.

⁸⁹ *Declaration on the Elimination of Violence Against Women*, UNGA 48th Sess, UN Doc A/RES/48/104 (1993) GA Res 48/104 art 1.

⁹⁰ Stark, *Coercive*, *supra* note 16 at 12 citing the American Medical Association, “Diagnostic and Treatment Guidelines on Domestic Violence” (1992) 1 *Archives of Family Medicine* 39.

⁹¹ *Ibid* at 13.

⁹² *Ibid* at 15. He notes that “entrapment of women in personal life is also hard to discern because many of the rights it violates are so basic – so much a part of the taken-for-granted fabric of the everyday lives we lead as adults, and so embedded in female behaviors that are constrained by their normative consignment to women – that their abridgement passes largely without notice . . . women who had to answer the phone by the third ring, record every penny they spent, vacuum ‘till you can see the lines,’ and dress, walk, cook, talk, and make love in specific ways and not in others, always with the ‘or else’ proviso hanging over their heads.”

(isolation), and appropriating or denying them access to the resources required for personhood and citizenship (control).”⁹³

One may ask when this coercive control enters into the realm of unacceptable, and the majority in the SCC in *Ahluwalia* defines when control enters into the tortious saying the:

equal standing of each partner in an intimate relationship is both the precondition for autonomy and the measure of its protection. A spouse’s abusive conduct towards their partner – when that conduct objectively amounts to coercive control in a manner incompatible with these aspects of the intimate partnership – can cause the loss of that personal freedom for the victim of abuse. Moreover, autonomy demands protection against all modes of unjustified coercion that erode one’s ability to make fundamental decisions.⁹⁴

This loss of autonomy and decision-making amounts to coercive control and “the collapse of the shared normative foundation – dignity, autonomy, and equality – on which intimate partnerships are meant to rest.”⁹⁵ Sheehy notes that many women’s abuse would easily fit the definition of torture by the World Medical Association (WMA).⁹⁶ However, as noted by Edwards, women are far more likely to suffer torture at home rather than at the hands of a state actor, but that is not “valued” in the same way.⁹⁷ Sheehy notes that MacKinnon and others recognize that recognizing torture in international law would “address the double

⁹³ *Ibid.* See Rafael Gumucio, “My Tortured Inheritance” (13 December 2004), online: <<https://www.nytimes.com/2004/12/13/opinion/my-tortured-inheritance.html>> [<https://perma.cc/4WP4-JAAU>] (referring to the Pinochet regime in Chile) who notes that “[t]orture is an act that stems not from savagery but from extreme cultural and scientific sophistication. It makes the survivors feel that they are among the privileged, traitors to the cause. It kills people’s spirits but keeps their bodies alive, transforming all those who escape it into zombies in the service of another despicable torturer: fear. It is a gruesomely effective tool, for it knows just how to manipulate imagination and paralyze instincts for rebellion or resistance.”

⁹⁴ *Ahluwalia*, *supra* note 26 at para 131.

⁹⁵ *Ibid.* at para 132.

⁹⁶ Elizabeth A. Sheehy, *Defending Battered Women on Trial: Lessons from the Transcripts* (Vancouver: UBC Press, 2014) at 185 [Sheehy, *Defending Battered Women*].

⁹⁷ Alice Edwards, “The Feminizing of Torture under International Human Rights Law” (2006) 19:2 LJIL 349 at 353.

standard whereby torture is seen as heinous because it is done to men as well as to some women (and therefore there must be international standards), but domestic violence and sexual assault are minimised because these crimes are committed almost exclusively against women.”⁹⁸ Elizabeth Sheehy notes that a battered woman’s trial “legalized torture, a ‘trial by ordeal’ with the humiliation of her abuse on full display in the courtroom.”⁹⁹ One of the most basic (and little studied) aspects of the torture sustained by many women is one of the most basic elements needed by humans: sleep.

B. *Sleep Deprivation*

Depriving a human of sleep without their willing consent and careful medical care is a barbaric tool of assault, psychologically and biologically. Measured on the basis of mortality impact over the long term, it is on a par with starvation. It is high time to close the chapter on torture, including the use of sleep deprivation – an unacceptable and inhumane practice, one that I believe we will look back on with the very deepest of shame in years to come.¹⁰⁰

Randy Gardner received the Guinness World Record (GWR) for sleep deprivation in 1964 after being awake for 11 days straight or 264 hours.¹⁰¹ Gardner recalled his irritability and the physical symptoms caused, saying, “I was really nauseous. And this went on

⁹⁸ Elizabeth A. Sheehy, “Criminalising Private Torture as Feminist Strategy: Thinking through the implications” in JaneMaree Maher et al., eds, *In Intimate Partner Violence, Risk, and Security: Securing Women’s Lives in a Global World*, 1st ed (Routledge, 2018) at 255-56 [Sheehy, “Criminalising Private Torture”]. See also Bonita C. Meyersfeld, “Reconceptualizing Domestic Violence in International Law” (2003) 67:2 Alb L Rev 371.

⁹⁹ Sheehy, *Defending Battered*, *supra* note 97 at 121.

¹⁰⁰ Matthew Walker, *Why We Sleep: Unlocking the Power of Sleep and Dreams* (New York: Simon & Schuster, 2017) at 308.

¹⁰¹ Ashley Montgomery, “Lessons from Sleeplessness: The 60th Anniversary of Randy Gardner’s World Record” (28 January 2024), online: <<https://www.npr.org/2024/01/28/1227217274/sleep-deprivation-record>> [perma.cc/2EW6-HW65] It has been noted by that the, “last Guinness world record for sleep deprivation was awarded in 1986 to Robert McDonald, who deprived himself of sleep for almost 19 days. In 1996, the GWR stopped tracking sleep deprivation, citing the “harmful” effects of sleeplessness.”

for just about the entire rest of the experiment. And it just kept going downhill. I mean, it was crazy where you couldn't remember things. It was almost like an early Alzheimer's thing brought on by lack of sleep."¹⁰² GWRs later stopped an award for sleep deprivation saying, "[s]leep is just one of those key, absolute, fundamental parts of human nature – we need our sleep. And I think that's why this is a particularly fascinating record, because challenging the extremes of something that is so absolute is key to understanding who we are as a species."¹⁰³ Because of this, the research into sleep deprivation as torture is limited. Calling for the end of the use of sleep deprivation by government actors has been a trope for many years. Those who have studied torture and terrorism know that sleep deprivation has been found to be extremely effective in breaking down the will of those subjected to this punishment. However, it has also been found that those engaged in domestic violence also weaponize sleep, yet there are no impassioned pleas to help these victims of sleep deprivation.¹⁰⁴ This is not a new technique.

Okun also noted the deprivation that is similar in both the prisoner of war and the battered woman. He notes that most "battered women suffer loss of sleep. Anxiety-induced insomnia is common; the batterer also often takes steps to prevent his mate from sleeping. Sleep deprivation procedures include lengthy harangues and interrogations into the night; making loud noise with stereos, television or machinery; threats of battering or murder if the woman falls asleep; and enforcement of the expectation that the battered woman be awake when her mate returns home."¹⁰⁵ Many women are also subjected to unrealistic work requirements (including child care and housework) that will drive them to the point of exhaustion.¹⁰⁶

¹⁰² *Ibid.*

¹⁰³ *Ibid.* Gardner later admitted to developing insomnia later in life as he was unable to sleep for long periods of time.

¹⁰⁴ Tania Tetlow, "Criminalizing 'Private' Torture" (2016) 58:1 Wm & Mary L Rev 183 at 194.

¹⁰⁵ Okun, *supra* note 14 at 122.

¹⁰⁶ Okun, *supra* note 14 at 122.

In a 2024 study by Suzie Richards, she noted that the abuse described by the women who were describing their abuse through deliberate sleep deprivation by their abusers, “resonated with documented accounts from detainees in Guantanamo Bay detention centre where sleep deprivation was used as a form of torture.”¹⁰⁷ As most of us realize, limiting sleep and the resultant exhaustion make everything in life more challenging, and may impair a victim’s ability to extricate themselves from the situation.¹⁰⁸ Many women have described living in fear of being attacked while sleeping, physically or sexually.¹⁰⁹ Many researchers have noted that survivors of IPV report that they were woken up in terrifying ways by turning on loud music, or “spraying her with mace, and another by raping her.”¹¹⁰ Again, as seen with prisoners of war, the battered woman is often under the complete control of the batterer in that the “perpetrator supervises what the victim eats, when she sleeps, when she goes to the toilet, what she wears. When the victim is deprived of food, sleep, or exercise, this control results in physical debilitation.”¹¹¹

Of course, there is little, if any, physical evidence of sleep deprivation for so many victims,¹¹² but the abuse can lead to “decreased daytime functioning, lost productivity, increased accidents, and decreased quality of life.”¹¹³ Many women only sleep

¹⁰⁷ Suzie Richards, “A Qualitative Study Exploring the Experience of Sleep Deprivation as a Means of Coercive Control in Intimate Relationships” in Claire McLoone-Richards, ed, *In Researching Domestic Abuse and Sexual Violence: Critical Perspectives for Student-Practitioner Researchers* (New York, NY: Routledge, 2024) at 89.

¹⁰⁸ Tetlow, *supra* note 105 at 194.

¹⁰⁹ See also Pam Lowe, Cathy Humphreys & Simon J. Williams, “Night Terrors: Women’s Experiences of (Not) Sleeping Where there is Domestic Violence” (2007) 13:6 *Violence Against Women* 549 at 552.

¹¹⁰ Tetlow, *supra* note 105 at 194-95.

¹¹¹ Herman, *supra* note 59 at 77. Herman goes on to note at 78 that “sexual and domestic prisoners frequently describe long periods of sleep deprivation during sessions of jealous interrogation as well as meticulous supervision of their clothing, appearance, weight, and diet.”

¹¹² Richards, *supra* note 108 at 90.

¹¹³ Robert Walker, Lisa Shannon, & T. K. Logan, “Sleep Loss and Partner Violence Victimization” (2011) 26:10 *Journal of Interpersonal Violence* 2004 at 2005.

when their abuser is out of the home, or when he is asleep.¹¹⁴ Sleep deprivation has numerous negative impacts including “obesity, diabetes, other primary sleep disorders such as sleep apnea, alcohol and/or drug abuse, depression, other mental disorders, chronic pain, and environmental factors such as stressors including interpersonal victimization.”¹¹⁵ Another study showed sleep deprivation in those living in an IPV situation included fibromyalgia, migraines, blood pressure issues, digestive problems and increased susceptibility to illness.¹¹⁶ Some victims may have sleep disruptions because their children have sleep disturbances living in a home with IPV.¹¹⁷

This resultant torture was characterized by the “misappropriation of power, cruelty, and insensitivity to the suffering of their intimate partners.”¹¹⁸ Not surprisingly, there has been little research on the sleep of those who have experienced battering.¹¹⁹ The studies that have been done have shown that women who have been battered had less than five and a half hours of sleep per day, and this “gains importance when considering that sufficient restorative sleep may be related to the ability to problem solve and cope with adverse circumstances. Specifically, sleep loss, or short sleep duration, has been shown to negatively affect insight and awareness—two critical elements of problem solving that are critical for victims in seeking safety.”¹²⁰ These women, who have been tortured and sleep-deprived, are expected to come to court

¹¹⁴ Lowe, *supra* note 110 at 554-55.

¹¹⁵ R Walker, *supra* note 114 at 2005.

¹¹⁶ Lowe, *supra* note 110 at 556-57. See also Physicians for Human Rights, see note 124 at 23 who note that, “Even sleep restriction of four hours per night for less than a week can result in physical harm, including hypertension, cardiovascular disease, altered glucose tolerance and insulin resistance. Sleep deprivation can impair immune function and result in increased risk of infectious diseases. Further, chronic pain syndromes are associated with alterations in sleep continuity and sleep patterns.” Further, at 24, sleep deprivation has been found by US Federal courts as a violation of the Eighth Amendment’s protection from cruel and inhuman punishment because sleep is ‘considered a basic life necessity.’”

¹¹⁷ See also Lowe, *supra* note 110 at 550.

¹¹⁸ Richards, *supra* note 108 at 96.

¹¹⁹ R Walker, *supra* note 114 at 2004.

¹²⁰ *Ibid* at 2004, 2017.

and be the ideal victims and behave as the perfect witnesses. Is this even possible?

Sleep has long been used as a tool of torture. Aleksandr Solzhenitsyn wrote of his time in the gulag saying that sleep deprivation “befogs the reason, undermines the will, and the human being ceases to be himself, to be his own ‘I.’ ... A person deprived of sleep acts half-unconsciously or altogether unconsciously, so that his testimony cannot be held against him.”¹²¹ It is interesting that Solzhenitsyn would forward that a person could not be made to testify under these conditions, but that is what happens to the battered woman every day. Sleep scientists have long advocated for the abolishment of sleep deprivation on prisoners, some simply for the reason that truthful and accurate information is not obtained from someone who is impaired in this way. This includes the “loss of accurate memory recall, emotional instability that prevents logical thought, and even basic verbal comprehension. Worse still, sleep deprivation increases deviant behavior and causes higher rates of lying and dishonesty.”¹²² Yet, the justice system does not even ask if a woman’s testimony could be tainted by her sleep deprivation, and her agitation is seen as a personal weakness. By looking at one form of torture, sleep deprivation, it is clear that we are setting people up for failure in the justice system if we allow them to be tortured and then expect them to be the perfect victim at trial. Our entire evidentiary system needs a trauma-informed lens.

C. *Evidence*

The absence of physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars.¹²³

¹²¹ Aleksandr Solzhenitsyn, *The Gulag Archipelago: The Authorized Abridgement*, Abridged (New York: Harper Perennial, 2007) at 92-93.

¹²² M Walker, *supra* note 101 at 306.

¹²³ Physicians for Human Rights, “Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality” (August 2007) at x, online (pdf): <<https://phr.org/wp-content/uploads/2007/08/leave-no-marks-1.pdf>>

The problem is that the justice system (police and the court actors) is trained to look at evidence in a very linear and cisgender white male perspective. Epstein and Goodman note that we,

tend to believe stories that are internally consistent—they have a linear thread and are emotionally and logically coherent. But domestic violence often results in neurological and psychological trauma, both of which can affect a survivor's comprehension and memory. The result is a story that, to the untrained ear, sounds internally inconsistent and therefore implausible. In addition, we tend to believe stories that are externally consistent—that fit in with how we believe the world works. But many aspects of the domestic violence experience are foreign, and therefore incomprehensible, to most nonsurvivors. The result is a story that appears on its surface to lack external consistency, and therefore—again—to be less plausible. Second, our assessments of women's personal trustworthiness suffer from skepticism rooted in perceptions of survivors' apparent 'inappropriate' demeanor, prejudicial stereotypes regarding women's false motives, and the longstanding cultural tendency to disbelieve women simply because they are women.¹²⁴

We classify evidence by how credible it is. Epstein and Goodman note that we give credence to accounts that “make logical and emotional sense, have a continuous, linear thread, form a coherent whole, and contain no significant, unexplained gaps in time or action. But for many domestic violence survivors, telling the truthful story of their abusive experience involves a narrative that is more impressionistic than linear, and that appears somewhat illogical or emotionally off-kilter.”¹²⁵ When there is no physical evidence of abuse, women are seen as “being petty and vindictive.”¹²⁶ If the victim does try to get evidence of child or family

[<https://perma.cc/94MA-HQ57>] citing *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, OHCHR, 2004, UN Doc HR/P/PT/8/Rev.1 at 33.

¹²⁴ Deborah Epstein & Lisa A Goodman, “Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing their Experiences” (2019) 167:2 *University of Pennsylvania Law Review* 399 at 405–406.

¹²⁵ *Ibid* at 406–07.

¹²⁶ Haley Hrymak & Kim Hawkins, “Why Can’t Everyone Just Get Along: How BC’s Family Law System Puts Survivors in Danger” (January 2021) at 44, online (pdf):

abuse they are seen as “the crazy one” trying to manufacture evidence.¹²⁷ Medical records, reports, text messages, interviews are viewed with suspicion and the courts find time and again that these documents were “not helpful to their legal matter.”¹²⁸ If a child does not want to go with their father, women are accused of “coaching” their child.¹²⁹ “Credibility discounting” makes many women loath to come forward because they rightly know that their narrative will not be believed.¹³⁰

During the pandemic in 2020, some have estimated an increase in DV of approximately 30%, resulting in “epidemic levels in Canada.”¹³¹ The pandemic magnified the fact that our current criminal system is very much focused on an episodic understanding of violence. Heidi Illingworth with the Ombudsman for Victims of Crime has noted that “IPV is approached as an incident-based problem. It is treated as an episodic or one-time event and the repetitive dynamics of coercive control are not recognized. This makes it extremely difficult for law enforcement to intervene effectively.”¹³² All violence is not a defined event, and often lacks physical evidence of the abuse. The majority of the SCC in *Ahluwalia* noted that, “the tendency to frame intimate partner violence as episodic or incident-based sometimes fails to speak to the cumulative pattern of conduct that is greater than the sum of its parts.”¹³³ It is this cumulative effect that makes coercive control so dangerous, antithetical to equality, and difficult to prove.

Evan Stark has noted that, “[v]iewing woman abuse through the prism of the incident-specific and injury-based definition of

<<https://static1.squarespace.com/static/64220f300321233050a209ec/t/65de3b22be93725ee19fa396/1709062949128/Why+can%27t+everyone+just+get+along.pdf>> [<https://perma.cc/BK39-PHAE>].

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ Deborah Epstein “Discounting Credibility: Doubting the Stories of Women Survivors of Sexual Harassment” (2020) 51:2 Seton Hall Law Review 289 at 293 [Epstein, “Discounting Credibility”].

¹³¹ Silverstone, *supra* note 85 at 6.

¹³² Evidence, *supra* note 38, Testimony of Heidi Illingworth, Ombudsman, Office of the Federal Ombudsman for Victims of Crime, February 4, 2021 at 11.

¹³³ *Ahluwalia*, *supra* note 26 at para 134.

violence has concealed its major components, dynamics, and effects, including the fact that it is neither ‘domestic’ nor primarily about ‘violence.’ Failure to appreciate the multidimensionality of oppression in personal life has been disastrous for abuse victims. Regardless of its chronic nature, courts treat each abuse incident they see as a first offense.”¹³⁴ Because of this view as the “first offence” offenders rarely serve prison time. Stark notes that it is time to perhaps challenge the view that abuse is “tragic but somehow inevitable.”¹³⁵

Not only is their mental health at jeopardy for those going through the criminal or family law court process, so is physical health. More than 80% “of the women said the court process had an impact on their health; 62.5 percent said they developed a new health problem while their legal matter was proceeding.”¹³⁶ In fact, an advocate quoted in the Rise, 2021 report said that in her decade of experience, “the women who had the worst abusers all had significant complex health issues such as multiple sclerosis, cancer, and heart conditions.”¹³⁷ One explanation why women are not believed when they report non-state torture¹³⁸ is a theory called the

¹³⁴ Stark, *Coercive*, *supra* note 16 at 10.

¹³⁵ *Ibid.*

¹³⁶ Hrymak & Hawkins, *supra* note 127 at 63.

¹³⁷ *Ibid.*

¹³⁸ “Non-state torture” is a term used by grass roots movements. See Global Rights for Women, “The Emergent Movement to Connect Extreme GBV and Trafficking as Non-State Torture” (14 November 2024), online (webinar): <<https://globalrightsforwomen.org/project/the-emergent-movement-to-connect-extreme-gbv-and-trafficking-as-non-state-torture/>> [<https://perma.cc/V4SL-CPSY>] and Persons Against Non-State Torture, “Torture Happens Here Too” (last visited 21 May 2026), online: <<https://nonstatetorture.org/>> [<https://perma.cc/53CD-5L59>]. The Non-State Torture Working Group (NST Working Group) is a group of individuals who self-published papers and books about non-State torture. The group called “Persons Against Non-State Torture” is a grassroots project that started in Nova Scotia in 1993 by nurses (now retired). See Jeanne Sarson, Linda MacDonald & Linda Witong, “Stop Non-State Torture: A Victim-Centred Approach” (6 September 2024), online: <<https://crimealliance.org/news/nst/313>> [<https://perma.cc/ZN6C-NGKK>]. This group has produced a definition of non-State torture crimes

“false consensus bias.”¹³⁹ Deborah Epstein notes that this bias says that our unconscious worldview sees our choices as widely shared and the right decisions, while the opposite perspective is absurd or inappropriate. This bias allows us to believe that our experiences and preferences are “universal” and we believe that our way of seeing the world is “basic common sense and that, as a result, if we believe a certain thing or would behave in a certain way, other people will (or at least should) do the same. The pervasive and powerful nature of this bias is supported by extensive data across a wide variety of research studies.”¹⁴⁰ We know that a large proportion of judges do not have the lived experience of IPV, and do not understand the views of those who have been tortured. It is understandable that these individuals would not believe the extent to which women are tortured behind closed doors. The truth remains that most judges are non-survivors, and they could not imagine themselves remaining in a relationship that is marred by extreme violence and control. Because of this disconnect, there is a profound gap “between survivor and nonsurvivor understandings of the world [which] strongly shapes common judicial expectations about experiences of harm.”¹⁴¹ If the victim’s allegations about IPV

as, “Non-State Torture (NST) is committed by non-State actors in public or private, in relationships, perpetrated within families, in human trafficking, in prostitution, in pornographic exploitation, by violent groups and gangs, dismissed as socio-cultural, traditional, or religious acts or norms, and can be committed during migration, displacement, and in humanitarian and civil unrest, for example.” In their Brief to the House of Commons Standing Committee on Health on March 31, 2024, Jeanne Sarson and Linda MacDonald added to the above definition of non-State torture by adding, that this type of torture “involves intentional infliction of, for example, mental or physical severe pain and suffering with electric shocking, water torture, forced drugging, group raping, beatings, whippings, cut, burnt, impregnations and abortions.” See Jeanne Sarson & Linda MacDonald, “Persons Against Non-State Torture” (31 March 2024) at 1, online:

<https://www.ourcommons.ca/Content/Committee/441/HESA/Brief/BR13012814/br-external/PersonsAgainstNonStateTorture-e.pdf>
[perma.cc/M5ED-APGP].

¹³⁹ Epstein, “Discounting Credibility”, *supra* note 131 at 297.

¹⁴⁰ *Ibid* at 297-98.

¹⁴¹ Epstein & Goodman, *supra* note 125 at 416.

do not connect with the decision-maker's view, they will be seen as unworthy of credibility.¹⁴² Thus, so many women are not believed and are seen as exaggerating or feigning their abuse. Add to this stressful presentation of physical conditions the lack of sleep and the imposition of torture, and it is a wonder that any woman survives this "justice" process if they are lucky enough to be heard. After suffering this type of trauma, it is hardly surprising that this victim is not the perfect witness in a courtroom.

D. Torture is a Crime, But Not for the Victim of IPV?

For the most part, gender-based violence is widely excused or encouraged while torture is widely perceived as wrong.¹⁴³

In 1995 the Law Reform Commission of Nova Scotia released a Final Report titled, *From Rhetoric to Reality, Ending Domestic Violence in Nova Scotia*.¹⁴⁴ The report sought to examine ways in which the legal system in Nova Scotia could be reformed to respond to DV. Recommendation 29 said that the "criminal offence of torture should be reviewed to make it available for use in domestic violence cases or alternatively a new crime of domestic violence should be created with similarly severe sanctions."¹⁴⁵ IPV as torture is not a new idea. This has been a recommendation in formal government documents for over 30 years, but these amendments were not made. What has changed, as of 2021, is the reform to our family law legislation, which has taken a step forward in recognizing the devastating impacts of coercive control. Legislation suggests that the totality of the abusive relationship and the cumulative acts rather than the antiquated practice of looking at DV as discrete acts with (usually) physical ramifications. Whether this is truly done in practice is another issue.

¹⁴² Jennifer Koshan, "Challenging Myths and Stereotypes in Domestic Violence Cases" (2023) 35:1 Can J. Fam. L. 33 at para 23.

¹⁴³ Rhonda Copelon, "Recognizing the Egregious in the Everyday: Domestic Violence as Torture" (1994) 25:2 Colum Hum Rts L Rev 291 at 362.

¹⁴⁴ Law Reform Commission of Nova Scotia, *From Rhetoric To Reality Ending Domestic Violence In Nova Scotia* (Nova Scotia: Law Reform Commission of Nova Scotia, 1995).

¹⁴⁵ *Ibid* at 110.

However, other amendments were made to the *Criminal Code*¹⁴⁶ in 2019 with the coming into force of Bill C-75 including the reversal of onus for bail for repeat offenders, allowing longer maximum sentences for those who are recidivists, and clarifying if IPV of an intimate partner or family member is an aggravating factor when it comes to sentencing. The *Criminal Code* sections under which a charge can be levied against someone who is purported to commit domestic violence include: s. 162 (voyeurism); s. 215 (failure to provide necessities of life); s. 219 and following (criminal negligence); s. 264 (criminal harassment); s. 265-268 (assault, aggravated assault); s. 271 (sexual assault);¹⁴⁷ s. 279 and following (kidnapping, trafficking); s. 280 and following (abduction); s. 229 following (homicide); s. 264 (harassment); and s. 264.1 (uttering threats); s. 346 (extortion); s. 380 (fraud); s. 372 (harassing communications); and s. 423 (intimidation); s. 430 (mischief).¹⁴⁸ There is no mention of coercive control in the *Criminal Code*.¹⁴⁹ It is also important to note that there may not be a corresponding criminal act associated with the many aggressions involved with coercive control. Janine Benedet noted that, “[t]hreatening to destroy someone's property or keeping them away from their friends doesn't really amount to the offence of unlawful confinement, which requires physical restraint of the person.”¹⁵⁰ A recent bill tabled in February 2026 asked to have the crime of coercive control added into the Canadian *Criminal Code*, but it has not yet completed the process. It is important to note that coercive

¹⁴⁶ *Criminal Code*, *supra* note 27.

¹⁴⁷ *Criminal Code*, *supra* note 27. Section 278 of the *Criminal Code* states that “a husband or wife may be charged with an offence under 271.” A historic holdover which gives pause to the reader in what seems as if it does not need saying. But it does.

¹⁴⁸ Silverstone, *supra* note 85 at 7 and Government of Canada, “Family Violence Laws” (17 May 2024), online: <<https://www.justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html>> [<https://perma.cc/G4LW-A36Q>]. Coercive control does not appear in the *Criminal Code*. Note that these sections are excluding those crimes against children which could also be DV.

¹⁴⁹ Note that a Bill is currently under consideration to add coercive control to the *Criminal Code*, see below.

¹⁵⁰ *Evidence*, *supra* note 38, Testimony of Janine Benedet, Professor at University of British Columbia law, February 4, 2021 at 10.

control is not a crime and cannot be enforced as one across Canada.¹⁵¹

It is clear that the gendered beliefs about discrete acts of violence – from one man to another – was the model for the policing of assaults. As noted by Charlotte Bishop, this enforcement method:

originates from a time when violence occurring in the domestic sphere was not considered to be a social problem, let alone a criminal matter. Thus, the protection offered by the criminal justice system in situations of domestic violence often relies on the application of criminal law provisions, which are often ill-suited and fail to take into account the unique dynamics and type of harm caused. The legislation befits occasions where a physical injury has occurred in the presence of witnesses. Such legal instruments, therefore, often fall short in adequately addressing domestic violence cases that rely on victim testimony, or where there may be minor physical injuries, but much longer term severe psychological distress. As a result, sentences may not reflect the severity of the harm inflicted, or the level of ongoing protection required. It might be affirmed, therefore, that the mechanics involved in the violent and abusive acts committed by an intimate partner cannot be adequately equated to legal provisions intended to address bar brawls and street fights.¹⁵²

Using this traditional model in reference to a distinctly modern understanding of this type of wrong does not make legal sense.

There needs to be a step away from the myths and stereotypes that have trapped women and reinforced the notion that they are fabricating accounts of their abuse.¹⁵³ The state-sanctioned

¹⁵¹ See Bill C-16, *An Act to Amend Certain Acts in Relation to Criminal and Correctional Matters (Child Protection, Gender-Based Violence, Delays and Other Measures)*, 1st Sess, 45th Parl, 2025 (Bill C-16 received royal assent on 18 June 2026).

¹⁵² Charlotte Bishop, "Domestic Violence: The Limitations of a Legal Response" in Sarah Hilder and Vanessa Bettinson, eds, *In Domestic Violence Interdisciplinary Perspectives on Protection, Prevention and Intervention* (London: Palgrave Macmillan, 2016) 59 at 66.

¹⁵³ See Amelia Mindthoff, Deborah Goldfarb & Kelly Alison Behre, "How Social Science Can Help Us Understand Why Family Courts May Discount Women's Testimony in Intimate Partner Violence Cases" (2019) 53:3 Family Law Quarterly 243 at 250-251 including the myths of, "Misperception #1: 'I would immediately leave a partner who abused me.' Misperception #2: 'I can

condemnation of this conduct is so important, as Benedet noted in her testimony before the House that if women are not reporting because they are afraid of the negative reaction of police and the Crown and that their matter will not be adequately investigated, “there becomes a privatization of violence against women, the idea that it’s meant to be solved by women alone, perhaps in conjunction with some community supports but that there’s no state responsibility to interfere with male violence.”¹⁵⁴ Despite these recognitions of the levels of abuse experienced by women throughout the world and in Canada, many myths and stereotypes persist and affect custody outcomes for mothers. Among these myths are the assumptions that “credible women would report the assault to the police; a credible women would leave the relationship; violence against a woman by a man does not have an impact on the children and has nothing to do with his parenting ability; there is now family violence symmetry—women are just as ‘guilty’ as men; and abuse will likely stop once the relationship ends so there is no risk of future harm.”¹⁵⁵ These myths defy logic and are categorically false.

Since the parallels between IPV and torture exist (and have been discussed for decades) it is puzzling why the criminal law cannot see battering in this light. The only section in our Canadian *Criminal Code* that deals directly with torture is s. 269.1. This section provides that:

Torture

269.1 (1) Every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

tell if someone experienced interpersonal violence by the way they act when discussing the abuse.” Misperception #3: “It is easy to detect if someone is lying based on where they are looking and what they are saying.” Misperception #4: “I know what happened and the evidence supports me.”

¹⁵⁴ Evidence, *supra* note 38, Testimony of Prof. Janine Benedet, February 4, 2021 at 8.

¹⁵⁵ Donna Martinson & Margaret Jackson, “Family Violence and Evolving Judicial Roles: Judges as Equality Guardians in Family Law Cases” (2017) 30:1 Canadian Journal of Family Law 11 at 34.

Definitions

(2) For the purposes of this section,

official means

- (a) a peace officer,
- (b) a public officer,
- (c) a member of the Canadian Forces, or
- (d) any person who may exercise powers, pursuant to a law in force in a foreign state, that would, in Canada, be exercised by a person referred to in paragraph (a), (b), or (c),

whether the person exercises powers in Canada or outside Canada;
(fonctionnaire)

torture means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person

- (a) for a purpose including
 - (i) obtaining from the person or from a third person information or a statement,
 - (ii) punishing the person for an act that the person or a third person has committed or is suspected of having committed, and
 - (iii) intimidating or coercing the person or a third person, or
- (b) for any reason based on discrimination of any kind, but does not include any act or omission arising only from, inherent in or incidental to lawful sanctions. (torture)¹⁵⁶

Notably, this criminalized form of torture has to be at the hands of an “official.” Official torture is a very serious crime that is punishable by imprisonment for 14 years, but the same is not true for a woman who is battered by her partner in her own home. Sentences of 14 years for IPV related crimes are extremely uncommon. Perhaps having a sentence that is “commensurate with the defendant’s infliction of horror” would be clearer if we no longer “equate an egregious, repeated pattern of violence completed for the purpose of controlling another human being with a mere bar fight.”¹⁵⁷ With the crime of torture, we would be able to look at the totality of the relationship (which may span decades) rather than banning a victim from talking about her long-

¹⁵⁶ *Criminal Code*, *supra* note 27.

¹⁵⁷ Tetlow, *supra* note 105 at 214.

term abuse because the patterns and history would now be legally relevant.¹⁵⁸ Labelling this what it is, torture, “cuts through many of our cultural misunderstandings and our diminishment of domestic violence. It put the focus back on the perpetrator instead of the victim. It reminds us that violence is but one tool of many and that the worst scars are psychological.”¹⁵⁹ A new conception of the crime would bring welcome clarity to IPV.

Kristy Kassing and Anthony Collins have suggested the addition of the term “coercive control trauma” for use with IPV to recognize the impact of non-physical harm which is damaging to “one’s sense of self due to encompassing psychological abuse, economic manipulation, technology-facilitated control, and physical and/or sexual abuse.”¹⁶⁰ They have suggested this term to “affirm victim survivors” and to recognize the various types of abuse and the harms caused by these seemingly “harmless” actions over time (like stalking and technology-facilitated control).¹⁶¹ This would be an important step to get away from the transactional nature of crimes and the need for these actions to be “discrete crimes” in order for the criminal justice system to intervene. It has been noted that, “insistence on state involvement” ignores IPV in women’s lives, instead it is “rooted in and perpetuates the culture as well as the structure of the patriarchal state.”¹⁶² The current system enforces the “patriarchal divide” where “the right not to be subjected to torture has been discriminatorily applied to the lives of men.”¹⁶³ If IPV could be reframed as torture, this could lead to a new section of the *Criminal Code* instead of reliance on sections that may not fully fit.¹⁶⁴

¹⁵⁸ Tetlow, *supra* note 105 at 215.

¹⁵⁹ Tetlow, *supra* note 105 at 219.

¹⁶⁰ Kristy Kassing & Anthony Collins, “Slowly, Over Time, You Completely Lose Yourself: Conceptualizing Coercive Control Trauma in Intimate Partner Relationships” (2026) 41:3-4 *Journal of Interpersonal Violence* 663 at 678.

¹⁶¹ *Ibid.*

¹⁶² Copelon, *supra* note 144 at 297.

¹⁶³ Sarson & MacDonald, “Victim-Centred”, *supra* note 139 at 4.

¹⁶⁴ See section above on provisions in the *Criminal Code* which may be applicable. Those sections would, of course still be available in situations where it fits,

As noted above, our courts are designed to recognize and punish isolated episodes of violence and our criminal law system remains very transactional. Our system was designed to take an isolated criminal act and punish for that crime. Our system was not designed to look at patterns of abuse over decades of time, which if viewed through a transactional lens, may not even be criminal. At first blush this may seem like it is a necessity under our system, but the sad reality is that a judge who is only allowed to see a “single moment of violence in isolation will never understand the totality of the reign of terror.”¹⁶⁵

Discussions about histories of abuse are often met with the ire of lawyers and judges alike, and some are ordered not to talk about any pre-existing IPV. To a victim who needs to tell her story to paint a picture of what has happened to her, this is inexplicably cruel. This could also be a disservice to the children and survivors as it inadequately accesses danger to the parties. Transactional crime was noted by Stark almost 20 years ago when he said that, with few exceptions, “crimes are conceived as discrete acts.”¹⁶⁶ Police are no longer taking a statement about an act, there is now a much more complicated narrative of coercive control. It is no longer a simple matter of recording the discrete facts around an incident-based encounter. The proof of coercive control could be over multiple years and many incidents, which stresses police resources even further.¹⁶⁷ It is only through context and an examination of the full perspective that the court can conclude if this is an isolated incident of violence or a history of torture. An unnamed crime perpetrated on an ignored group of people does not lead to change. Jones et al have questioned:

but additional provisions (such as what is currently happening with coercive control) should be added to the *Criminal Code*. Also note that there may be *Charter* considerations, particularly section 7 and 12, but that is beyond the scope of this paper.

¹⁶⁵ Tetlow, *supra* note 105 at 203.

¹⁶⁶ Stark, *Coercive*, *supra* note 16 at 86.

¹⁶⁷ Home Office, “Review of the Controlling of Coercive Behaviour Offence” (March 2021) at 33, online (pdf):
 <<https://assets.publishing.service.gov.uk/media/608bdba28fa8f51b909ca167/review-of-the-controlling-or-coercive-behaviour-offence.pdf>>
 [<https://perma.cc/EQ8S-V5WC>].

[h]ow will women ever earn *legal credibility* if they are forever denied legal justice to name and speak of the non-State torture crimes they have suffered? Naming a specific crime—non-State torture—would create factual evidence identifying specific data about such a crime. Naming non-State torture would also eliminate impunity afforded to non-State torturers, and expand understanding that non-State torture victimization exists in the private sphere. This understanding would help to improve the skills of law enforcement officers, legal practitioners, child protection workers, and health professionals. It would therefore improve women’s safety and the development of non-State torture victimization-traumatization informed interventions, which are of ultimate importance in ensuring women’s legal credibility and reliability.¹⁶⁸

Calling this crime what it is – torture – can only help elevate the voices of the women who are suffering.

One theory that examines this is Ruth Leah Perrin’s “just world theory” as applied to battered women.¹⁶⁹ Perrin calls on the work of Robert Loo¹⁷⁰ from a management perspective, and Daniel G. Saunders, Kathleen C. Faller, and Richard M. Tolman who brought the concept into the legal realm.¹⁷¹ She identifies this theory as a reason why many adjudicators do not seem to understand the lives of battered women. She notes that this theory assumes that “people have a need to believe that the world they live in is just.”¹⁷² It is horrifying to think that women are suffering as hostages at home. Most individuals are subconsciously inclined to believe that bad things happen to bad people, and good things happen to good people. Applied to the context of domestic violence, the just world theory would indicate that those who have

¹⁶⁸ Jones et al., *supra* note 49 at 45.

¹⁶⁹ Ruth Leah Perrin, “Overcoming Biased Views of Gender and Victimhood in Custody Evaluations When Domestic Violence Is Alleged” (2017) 25:2 American University Journal of Gender, Social Policy & the Law 155.

¹⁷⁰ Robert Loo, “Belief in a Just World: Support for Independent Just World and Unjust World Dimensions” (2002) 33 Personality and Individual Differences 703.

¹⁷¹ Daniel G. Saunders, Kathleen C. Faller, & Richard M. Tolman, *Child Custody Evaluators’ Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations* (Washington DC: Office of Justice Programs, 2011).

¹⁷² Perrin, *supra* note 170 at 171-72.

experienced domestic violence somehow caused or must deserve their abuse. Saunders' study examined whether custody evaluators believed in the just world theory and found that those who did were more likely to hold certain false beliefs about custody.

Perrin examined the study by Saunders, Faller, and Tolman which surveyed custody evaluators and other legal professionals in the US and examined various beliefs held about domestic violence and custody. This study found that a deep-held belief in a just world is correlated with the belief that domestic violence is not relevant to custody, that mothers make false allegations about domestic violence, that mothers alienate children, and that victims hurt their children when they resist co-parenting.¹⁷³ It is much easier to believe that a woman is falsifying DV than believe that it has occurred, especially where there is no traditional "evidence." It is much easier to believe that if someone looks like a good parent, then they are. The problem, as seen above in the section on evidence, many times abusers can appear as much better parents in court than their spouses who are traumatized.¹⁷⁴ At its most basic, people want to believe that good things happen to good people, and bad things happen to bad people, and one must justify if something bad happened.¹⁷⁵ An easy answer is to blame the victim for some sort of contribution. This inherent fallacy is very difficult to overcome, and the consequence of this stance by members of the judiciary who believe that the world is ordered and predictable is a denial of justice for those who truly need help.¹⁷⁶ It has been recommended for over 30 years that we use section 269.1 for DV victims with a possibility of a substantial sentence. The lived experiences of women finally need to be heard.

¹⁷³ Saunders, *supra* note 172.

¹⁷⁴ Perrin, *supra* note 170 at 172.

¹⁷⁵ *Ibid.*

¹⁷⁶ Delaney Rives Knapp, "Fanning the Flames: Gaslighting as a Tactic of Psychological Abuse and Criminal Prosecution" (2019) 83:1 Alb L Rev 313 at 331.

V. CASE EXAMPLE

A. *State of North Carolina v Norman*¹⁷⁷

There have been several American cases which have acknowledged this link between the battered woman and torture victims. In *Missouri v Edwards* the court found that there are no easy answers to why women stay with abusers but that when the abuse is so severe and over an extended period of time it “creates a standard mental attitude in its victims. Battered women are terror-stricken people whose *mental state is distorted* and bears a marked resemblance to that of a hostage or a prisoner of war. The horrible beatings they are subjected to brainwash them into believing there is nothing they can do. They live in constant fear of another eruption of violence.”¹⁷⁸ Similarly, in *Kansas v. Hundley*, the court notes that this is a “textbook” case of a battered woman who is “psychologically similar to hostage and prisoner of war cases . . . Battered women are terror-stricken people whose mental state is distorted and bears a marked resemblance to that of a hostage or a prisoner of war.”¹⁷⁹ Very few Canadian cases adopt the perspective of battering as torture.¹⁸⁰ *R v Dodd* is one of those few Canadian cases that, in sentencing, referred to the abuse in this way. The court in *Dodd* described that the battered spouse is at such a disadvantage when:

the circumstances reveal the normal safe haven of one's home has been turned into a virtual chamber of torture for its victim through persistent physical abuse, calculated to engender feelings of helplessness,

¹⁷⁷ 378 SE (2d) 8 (NC 1989).

¹⁷⁸ 60 SW (3d) 602 at 613 (2001) [*Edwards*] (emphasis in original).

¹⁷⁹ 693 P (2d) 475 at 479-80 (1985) [*Hundley*].

¹⁸⁰ Of course cases like *R v Lavallee*, 1990 1 SCR 852 describe a pattern of terror that does not use the word “torture.” Other cases have followed suit using the word terror. See *R v Saulis*, 2025 NBPC 03 at para 61, where the court noted that “[m]ake no mistake that the mental terror and control invariably experienced by victims of intimate partner violence is a form of harm that is equally insidious and every bit as devastating. With rare exception, these two forms of harm are both present in cases of intimate partner violence and work in tandem to undermine the personal dignity, autonomy and security of victims.”

hopelessness and terror in the victim, and resulting, as it did here, in permanent and life threatening injury.¹⁸¹

There are a handful of cases where the court describes the battered woman as akin to someone who is tortured.¹⁸²

The *State v Norman* out of North Carolina is one of the few cases that calls domestic violence torture in no uncertain terms. Ms. Norman killed her abusive husband, while he slept, after 20 years of indescribable abuse. There was expert testimony in this case by Dr. William Tyson. Dr. Tyson explained that Ms. Norman “believed herself to be doomed . . . to a life of the worst kind of torture and abuse, degradation that she had experienced over the years in a progressive way; that it would only get worse, and that death was inevitable.”¹⁸³ The expert found that Ms. Norman was acting out of survival because she felt that her husband was immune to the law and all social agencies that she had contacted, so there was “no such thing as escape.”¹⁸⁴ Dr. Tyson stated that there were times that Mr. Norman forced the defendant to prostitute herself as part of the dehumanization process. Dr. Tyson analogized the process to practices in “prisoner-of-war camps in the Second World War and the Korean War.”¹⁸⁵ The court noted that Mr. Norman engaged in all kinds of indignities including putting cigarettes out on her:

throwing hot coffee on her, breaking glass against her face and crushing food on her face . . . her husband did not work and forced her to make money by prostitution, and that he made humor of that fact to family and friends. He would beat her if she resisted going out to prostitute herself or if he was unsatisfied with the amounts of money she made. He routinely called the defendant ‘dog,’ ‘bitch’ and ‘whore,’ and on a few occasions made her eat pet food out of the pets’ bowls and bark like a dog. He often made her sleep on the floor. At times, he deprived her of food and refused to let her get food for the family. During those years

¹⁸¹ *R v Dodd*, [1999] 139 CCC (3d) 2 at para 38.

¹⁸² See *R v St Pierre*, 2021 NBCA 48 at para 2. The term “terror” is used in many IPV cases in Canada. See *R v Saulis*, 2025 NBPC 03; *R v Feliciano*, 2019 ONCJ 263; *R v Reesor*, 2019 ONCA 901.

¹⁸³ *State v Norman*, *supra* note 13 at 11.

¹⁸⁴ *Ibid* at 11.

¹⁸⁵ *Ibid* at 18.

of abuse, the defendant's husband threatened numerous times to kill her and to maim her in various ways.¹⁸⁶

In addition to the expert witnesses, Ms. Norman presented testimony from those in her life who had witnessed her abuse. Not only did Ms. Norman think that she was trapped in this relationship without escape, but these witnesses also said that they believed it was impossible for her to leave. Ms. Norman's "isolation and helplessness were evident in testimony that her family was intimidated by her husband into acquiescing in his torture of her."¹⁸⁷ Witnesses testified to Ms. Norman's contact with social services and the legal system which resulted in little help and "contributed to her sense of futility and abandonment through the inefficacy of their protection and the strength of her husband's wrath when they failed."¹⁸⁸

Sadly, the majority of the court did not permit a defence of self-defence to go to the jury under the state requirements in North Carolina for either "perfect or imperfect" self-defence which the court found would be an inappropriate stretching of the law. Thus, the "defendant's conviction for voluntary manslaughter and the trial court's judgment sentencing her to a six-year term of imprisonment were without error" and Ms. Norman's conviction and sentence were upheld and the Supreme Court of North Carolina reversed the decision of the Court of Appeals which awarded the defendant a new trial."¹⁸⁹

The dissent in this case emphasized the reign of terror that was inflicted on Ms. Norman in the final three days of Mr. Norman's life, calling it an "unprecedented crescendo of violence."¹⁹⁰ The court aptly noted that where, "torture appears interminable and escape impossible, the belief that only the death of the oppressor can provide relief is reasonable in the mind of a person of ordinary firmness, let alone in the mind of the defendant, who, like a prisoner of war of some years, has been deprived of her humanity

¹⁸⁶ *Ibid* at 10.

¹⁸⁷ *Ibid* at 18.

¹⁸⁸ *Ibid* at 18.

¹⁸⁹ *Ibid* at 16.

¹⁹⁰ *Ibid* at 19.

and is held hostage by fear.”¹⁹¹ Witnesses described that Mr. Norman took his cigarette and “and put it out on her neck, the scars from which defendant displayed to the jury.”¹⁹² After beatings had continued the full day, Ms. Norman contacted the police. When the police arrived and found her face swollen and bruised, they said they could do nothing for her unless she was willing to take out a warrant on her husband. Fearing that her husband would kill her, Ms. Norman refused and the police left only to respond to a later call that Ms. Norman had taken an overdose of pills.¹⁹³ Mr. Norman tried to obstruct the ambulance that was called and was heard by officers to say, “let the bitch die.”¹⁹⁴ Ms. Norman’s mother said that she feared at this time that Mr. Norman would kill the entire family.

The next day Ms. Norman sought counselling on domestic violence, but agreed to help her husband to rehabilitate himself. As they were driving to a location where Ms. Norman was expected to make money by her prostitution, Mr. Norman poured a full glass of beer over her head, and he lay down on the front seat so that he could kick Ms. Norman, who was still driving, in the side of the head.¹⁹⁵ On the third day of beatings and refusing his wife food, Mr. Norman made her sleep on the floor beside the bed. Ms. Norman went to her mother’s house to get some pain pills and found a gun in her mother’s purse. Ms. Norman testified that she saw, “the gun was in there, and I don’t know, I just seen the gun, and I took it out, and I went back there and shot him.”¹⁹⁶ The dissenting justice noted that, “[f]rom this evidence of the exacerbated nature of the last three days of *twenty years of provocation*, a juror could conclude that defendant believed that her husband’s threats to her life were viable, that serious bodily harm was imminent, and that it was necessary to kill her husband to escape that harm. And from this evidence a juror could find defendant’s belief in the necessity to kill her husband not merely

¹⁹¹ *Ibid* at 18.

¹⁹² *Ibid* at 19.

¹⁹³ *Ibid* at 19.

¹⁹⁴ *Ibid*.

¹⁹⁵ *Ibid* at 20.

¹⁹⁶ *Ibid*.

reasonable but compelling.”¹⁹⁷ The dissenter found that the elements of self-defence were present and that the, “jury could infer that it reasonably appeared to defendant to be necessary to kill her husband in order ultimately to protect herself from the death he had threatened and from severe bodily injury, a foretaste of which she had already experienced.”¹⁹⁸ The dissent would have left self-defence to the jury and they may have recognized that Mr. Norman had “reduced the quality of the defendant's life to such an abysmal state that, given the opportunity to do so, the jury might well have found that she was justified in acting in self-defense for the preservation of her tragic life” after what the dissent found was a twenty-year history of beatings and other “dehumanizing and degrading treatment by her husband.”¹⁹⁹ The dissent found that if the evidence, “in support of self-defense is sufficient to create a reasonable doubt in the mind of a rational juror whether the state has proved an intentional killing without justification or excuse, self-defence must be submitted to the jury. This is such a case.”²⁰⁰ However, as noted above, the conviction and sentence of six years for involuntary manslaughter were affirmed by the majority.

VI. CONCLUSION – HOW CAN WE CHANGE OUR PERSPECTIVE?

Our streets are dotted with torture chambers houses in which perpetrators use violence, threats, and psychological tricks to break the spirit of their victims. Because those victims are usually wives and children, however, the problem fails to capture much attention. Not only is this torture ‘private’ because it is committed by nonstate actors, but it is doubly private because it occurs inside the home.”²⁰¹

Of course, there are many counterarguments why a new section of the *Criminal Code*, which includes torture by non-state actors, is unnecessary, or will over-expand or dilute the definition of torture. However, what many women are experiencing is squarely within

¹⁹⁷ *Ibid.* Emphasis added.

¹⁹⁸ *Ibid* at 21.

¹⁹⁹ *Ibid* at 17, 21.

²⁰⁰ *Ibid* at 21.

²⁰¹ Tetlow, *supra* note 105 at 186.

almost all definitions of torture, and diluting the term does not seem to be a real concern at this time for a section that is infrequently used. Many of these arguments against amending the section have been raised while considering a new offence of coercive control.²⁰² Perhaps using the recent SCC judgement in *Ahluwalia*, the court is open to a redrafting of provisions around IPV.²⁰³ It is encouraging that the court is turning to novel solutions to IPV problems. There have also been developments in sentencing and self-defence.²⁰⁴

However, some larger conclusions can be drawn. First, we need to recognize that there are many faces of abuse and how one might appear in court. There is no such thing as the perfect victim.²⁰⁵ Sleep deprivation can be highly effective at destroying everything we believe about the evidentiary process.²⁰⁶ Rhonda Copelon also notes that, for both POWs and battered women, there are many coping strategies, and recognizing this “elucidates the fallacy of limiting captivity to official custody. The power of the abusive partner is no less total or awful than that of the occupying military officer. What makes both dangerous is their power to exercise dominion over another person. Ultimately, both the official torturer and the domestic abuser have that power because society has given it to them.”²⁰⁷ Torture should not be limited to official sources, but official sources may have given abusers the ability to operate under our system of justice. The myths and stereotypes that

²⁰² See Pamela Cross, “To Criminalize or Not” (27 February 2024), online: <<https://pamelacross.ca/is-criminalizing-coercive-control-the-way-tog/>> [<https://perma.cc/N5KU-JW3W>], and Pamela Cross, “To Criminalize or Not (Part 2)” (24 April 2024), online: <<https://pamelacross.ca/the-bill-to-criminalize-coercive-control-is-back-with-the-house-of-commons>> [<https://perma.cc/M7VJ-YBRP>]; and Joey Carrier, “Criminalizing Coercive Control in Canada: Learning from an International Comparative Analysis” (2024) 46:6 Man LJ 39.

²⁰³ *Ahluwalia*, *supra* note 27.

²⁰⁴ See Chapman, *supra* note 68.

²⁰⁵ See Lila Meadows & Leigh Goodmark, “Discretion and Credibility, Dignity and Mercy: The Case of PT, A Criminalized Survivor” (2023) 38:1 Wisconsin Journal of Law, Gender & Society 53 at 54.

²⁰⁶ Tetlow, *supra* note 105 at 231.

²⁰⁷ Copelon, *supra* note 144 at 348.

plague battered women must be categorically denied by the courts. There are practical challenges to prosecuting an offence such as torture. I believe that the evidentiary issues need to be resolved but there is going to be just as much concern for the potential new offence of coercive control. These difficulties should not be used to deny the addition of a new section. Similarly, there may be issues in sentencing and proportionality, but these problems can also find solutions.²⁰⁸

Yet, the question remains, what can be done? The metaphors used by UK family therapist Nick Child are instructive. He notes that the family law system (and criminal law system to an extent) is like simply putting “ambulances at the foot of the cliff.”²⁰⁹ Child theorizes that we know this is a dangerous cliff that people continue to fall off. Of course, ambulances are needed when that happens but “it is just stupid if all we do is keep ambulances standing at the foot of the cliff. Better to prevent people falling at all. A fence at the top, for example. That would stop a simple accident. But what about thrill- and suicide-seekers who will climb over the fence? Preventing their falls requires less simple earlier measures linked to education, to helplines and mental health services, to safe cliff-climbing or safer alternatives for walkers and thrill-seeks.”²¹⁰ This simple metaphor makes the point about the efficacy of our system. The family law and criminal law systems are emergency services which serve some purpose, but the women who are living with torture keep being bandaged up (at best) without looking at the root causes of what is actually happening. Child also references the concept of “upstreaming”²¹¹ and I think that we need to use this

²⁰⁸ A full discussion of sentencing is beyond the scope of this paper.

²⁰⁹ Nick Child, “Prevention: An Angel you Don’t know for the Devil You Do” (5 January 2020), online: <https://thealienationexperience.org.uk/2020/01/05/prevention-an-angel-you-dont-know-for-the-devil-you-do/> [https://perma.cc/B2YP-5LXM].

²¹⁰ *Ibid.* As Nick Child notes, “many severe problems – family law cases, crime, the war on drugs – typically love vehicles with flashing lights as their solution.”

²¹¹ Dan Heath, *Upstream: How to Solve Problems Before They Happen* (Great Britain: Penguin, 2020) at 84-85. “Jacquelyn Campbell . . . worked with the local police department in Dayton, Ohio, to review all the cases in which a woman

principle when it comes to the family and criminal law realms. We need sooner and more effective intervention. Lawyers can have a very important role to play in, “prompt intervention, if they are sufficiently knowledgeable to present the right information and effective proposals to the court.”²¹² If lawyers do not know what they are dealing with or what to ask for, they need training on recommending appropriate psychological care, drafting the right orders, and recognizing when treatment is going off course. Otherwise, we are not using the resources available to assist our clients to make appropriate decisions.²¹³

Private Members Bill C-223 which seeks to amend the *Divorce Act* has a proposal to add to the legislation at section 7.7 (2.1) and (2.2) that it is the duty of every legal advisor to “consider” whether there are grounds to believe that there is a risk of family violence that could affect “the safety of the spouse” or the ability of the spouse to “negotiate a fair agreement” and the duty of that advisor to implement a safety plan using the support services known to that advisor.²¹⁴ I think this may be a suggestion that we need to take

had been murdered by a husband, boyfriend, or ex. . . Many of the files she reviewed contained crime-scene photographs, and one of those scenes is chiselled into her memory. It showed a woman handcuffed to a chair, dead from a gunshot wound. Her husband had shot her in the temple. It was a gruesome scene, but there was another detail that drew Campbell’s attention. The woman had a cast on her arm. The file showed that she’d broken her ulna – one of two parallel bones in the forearm – along with the radius. When people have accidents, they typically break both bones or just the radius. To break the ulna only is unusual and suggests a defensive injury. The woman had been holding up her arm to protect herself when she was hit with something hard enough to break her bone. But it wasn’t the injury that surprised Campbell – every file she reviewed included physical brutality. It was the cast. Because the cast meant that the woman had sought help in the health care system, and not one had been willing or able to protect her against further harm.”

²¹² Lyn R. Greenberg & Robert A. Schnider, “We’re Still Taking X-Rays but the Patient is Dying: What Keeps us from Intervening More Quickly in Resist-Refuse Cases?” (2020) 58:2 Family Court Review 488 at 493.

²¹³ *Ibid.*

²¹⁴ Bill C-223, *An Act to Amend the Divorce Act*, 1st Sess, 45th Parl, 2025 (first reading 18 September 2025). Note that the author has submitted a brief to the Standing Committee on Justice and Human Rights

seriously. Mediators and lawyers should screen for IPV, but having a group of specially trained individuals for the most serious cases is also essential. Jaffe, Crooks & Bala call for “access to specially trained child custody evaluators with expertise in domestic violence supervised access centers, and treatment resources for individual family members (including perpetrators, victims, and children.)”²¹⁵ These researchers also explain why education and training must be available for judges and lawyers as well in order to “help court-related professionals recognize domestic violence in all its forms and have the skills to provide differential service responses to meet the level of need for a family.”²¹⁶

Part of that team should be lawyers who are specially trained in these issues as well, in order to position families with the professionals that they need. Martinson and Jackson have noted that education in the special needs of those who have experienced domestic violence is key. They argue that both judges and lawyers need “current knowledge of social context, including the lived reality of women . . . together with up-to-date knowledge about equality principles applicable to family law” and this should be an ongoing part of judicial education not a one-time seminar.²¹⁷ Even where there is access to evaluators, research has found that these experts frequently, “(1) fail to document and understand the nature and risk of coercively controlling violence; (2) question the credibility of mothers by presenting them as having made false or inflated allegations of abuse; (3) label victims “unfriendly” or “alienating” parents; (4) de-contextualise trauma symptoms in victims from domestic violence.”²¹⁸ Bill C-223 may be able to assist

<<https://www.ourcommons.ca/committees/en/JUST/StudyActivity?studyActivityId=13345121>>.

²¹⁵ Peter G. Jaffe, Clair V. Crooks & Nicholas Bala, “A Framework for Addressing Allegations of Domestic Violence in Child Custody Disputes” (2009) 6:3-4 *Journal of Child Custody* 169 at 184.

²¹⁶ *Ibid* at 184. Jaffe, Crooks & Bala at 180 use the image of a freeway and an off-ramp for those high-conflict cases who need specialized intervention.

²¹⁷ Martinson & Jackson, *supra* note 156 at 41.

²¹⁸ Samantha Jeffries, “In the Best Interests of the Abuser: Coercive Control, Child Custody Proceedings and the ‘Expert’ Assessments That Guide Judicial Determinations” (2016) 5:1 *Laws* 1 at 9.

with some of these additional ongoing problems, but it has yet to pass legislative scrutiny.

Education is valuable, but it might not solve all our issues. Judges, lawyers, and court staff need training in trauma, coercive control, and their impacts on witnesses and testimony, as well as how a survivor might react. However, Epstein and Goodman warn that, for decades there has been DV training for judges but the “absorption” and use of this knowledge has been inconsistent. They note that some “individuals have absorbed this learning and are far more adept at avoiding knowledge-based pitfalls in assessing survivor credibility. For others, however, knowledge gaps persist despite exposure to high-quality training, raising doubts that training alone may be enough. Training must be accompanied by a genuine commitment to absorbing new and sometimes complex understandings about the world.”²¹⁹ They also mention how long this change might take because the “cultural assumption that women tend to be improperly motivated by an outsized concern for financial, material, or child custodial gain-and the related assumption that women simply lack full capacity as truth-tellers-are longstanding and deeply held.”²²⁰ It is clear that blind belief in the stories of survivors is to be questioned, but that our system must, “resist the reflexive presumption against crediting women's stories, make an effort to avoid false assumptions, overcome hermeneutic gaps, and open their minds to accepting a broader range of stories and storytellers. We might call this process one of cultivating a capacity for ‘virtuous listening.’”²²¹ I particularly admire the concept of virtuous listening, and perhaps this is something we can teach our law school students to help them in all areas of their lives, particularly when interviewing and listening to survivors.²²²

²¹⁹ Epstein & Goodman, *supra* note 125 at 453-54.

²²⁰ *Ibid* at 454.

²²¹ Epstein, “Discounting” *supra* note 131 at 327 who notes the work of philosopher Jose Medina, “Varieties of Hermeneutical Injustice”, in Ian James Kidd et al, eds, *The Routledge Handbook of Epistemic Injustice* (Routledge, 2017) at 48.

²²² See my paper on law school pedagogy, Frances E. Chapman, “A Conversation About Canadian Legal Education: Lakehead University and Dialogue Pedagogy” (2020) 21:1 Western Michigan University, Cooley Journal of Practical & Clinical Law 1.

As I have suggested elsewhere, and as Judith Herman purported, learned helplessness is wrongly applied to battered women and those who are chronically traumatized.²²³ We need to create a new conception of the battered woman because “[s]uch concepts tend to portray the victim as simply defeated or apathetic, whereas in fact a much livelier and more complex inner struggle is usually taking place. In most cases the victim has not given up. But she has learned that every action will be watched, that most actions will be thwarted, and that she will pay dearly for failure.”²²⁴ The concept of learned helplessness has also been criticized as “engender[ing] stereotypical ideas of a battered woman, which are then used to exclude those women who perform competently in other areas of their lives.”²²⁵ Simply because an individual feels trapped in an intimate relationship does not mean that she cannot perform fully in other aspects of her life. Many commentators have noted that to understand the battered woman, we need to examine gender inequality and the survival strategies that women are using to survive torture. If we do not, the “lack of support from law enforcement, social services, and the medical establishment tend to converge with society’s predisposition to blame battered women for their own abuse.”²²⁶ The similarities between prisoners of war and the process that is experienced by the battered woman are surprisingly similar, and we need to take those gendered lessons that we learned in the 1950s and apply them to a group of women who truly need help. We need to remember that “[v]iolence is a contagious disease, not a hereditary one. The pathogen is psychological, not biological, and it is primarily spread by means of social, economic, and cultural vectors, not biological ones.”²²⁷ We

²²³ Herman, *supra* note 59 at 90-91.

²²⁴ *Ibid* at 91. Herman also looks extensively at survivors of Nazi prison camps. This topic is beyond the scope of this thesis, but see Herman, *supra* note 59.

²²⁵ Carol Jacobsen, Kammy Mizga & Lynn O’Orio, “Battered Women, Homicide Convictions, and Sentencing: The Case for Clemency” (2007) 18:1 Hastings Women’s LJ 31 at 38.

²²⁶ *Ibid* at 39. See also Laurie Wardell, Dair L. Gillespie & Ann Leffler, “Science and Violence Against Wives” in D. Finkelhor, ed, *The Dark Side of Families: Current Family Violence Research* (Sage Publications, 1983) 69 at 69.

²²⁷ James Gilligan, *Violence: Reflections on a National Epidemic* (New York: Vintage Books, 1996) at 105.

Torture is Torture is Torture P

need to understand and stop the contagion of abuse by calling it by its name. Torture.