

# The Tort of Intimate Partner Violence (IPV) in Canada: The Supreme Court's Landmark Ruling in *Ahluwalia v. Ahluwalia*, and What it Means for Survivors of IPV

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# THE TORT OF INTIMATE PARTNER VIOLENCE

LESSONS FROM THE SUPREME COURT OF CANADA  
DECISION IN *AHLUWALIA V. AHLUWALIA*

# OVERVIEW

- Opening & Introduction (Dr. Katreena Scott, CREVAWC)
- A Survivor's Perspective: (Kuldeep Ahluwalia)
- Background & Overview of the Case (Kirsten Mercer, Mercer Advocates)
- Other important applications of the *Ahluwalia* decision (Emily Murray, Luke's Place)
- The Tort of IPV in Family Law Proceedings (Maneesha Mehra, Mehra Sample LLP)
- The Tort of IPV in Civil Proceedings (Kirsten Mercer, Mercer Advocates)
- Where to go from here? (Emily Murray, Luke's Place)
- Closing Reflection (Kuldeep Ahluwalia)
- Questions & Discussion

# **OPENING & INTRODUCTION**

# **A SURVIVOR'S PERSPECTIVE**

# **BACKGROUND & OVERVIEW OF THE CASE**

# LEGAL VOCABULARY

- **Tort:** *a form of wrongdoing for which a court can order damages*
- **Damages:** *compensation (almost always money) for harm proven*
  - General Damages
  - Consequential Damages
  - Punitive Damages
- **Objective standard vs subjective standard:** *That a “reasonable person” with familiarity regarding the context would think VS what the specific parties involved thought or understood.*
- **Trial Decision:** *the first level of court, where the decider makes findings of fact and law.*
- **Leave to appeal:** *permission from the court to file an appeal (narrow grounds).*
- **Intervener:** *an outsider to the dispute that gets permission to participate in a legal proceeding because the court finds that they have something of value to offer to the court about the issues. (Limited rights)*
- **Causation:** *legally proving that one thing contributed to another thing happening*
- **Limitation Period/ Statue-barred:** *the amount of time a party has to initiate a legal proceeding once they know (or should know) that they have a claim.*

# THE FACTS

- Ms. Ahluwalia and Mr. Ahluwalia were married for 16 years.
- Throughout the marriage, Mr. Ahluwalia abused his then-wife physically and emotionally. His conduct limited her ability to make choices in the relationship.
- Mr. Ahluwalia started divorce proceedings. Ms. Ahluwalia agreed to the divorce and asked for sole decision-making authority for the children, child support, spousal support, equalization of family property, and the sale of the matrimonial home.
- She also asked for damages for the abuse she suffered.
  - The judge recognized a new tort of family violence and awarded Ms. Ahluwalia compensatory, aggravated and punitive damages.
  - If she had not recognized this new tort, the judge indicated that she would have awarded the same amount under the existing torts of assault and intentional infliction of emotional distress.

# LEGAL HISTORY OF THE CASE

Ahluwalia v. Ahluwalia

2022 ONSC 1303, 161 O.R. (3d) 360 (Trial Decision)

- Justice Mandhane finds that “[w]hile the tort of family violence will overlap with existing torts, there are unique elements that justify recognition of a unique cause of action” (para. 54). Existing torts, observed the trial judge, do not fully encompass “the cumulative harm associated with the pattern of coercion and control that lays at the heart of family violence cases and which creates the conditions of fear and helplessness” (ibid. (emphasis in original)). In respect of patterns of family violence, the trial judge also wrote that “patterns can be cyclical and subtle, and often go beyond assault and battery to include complicated and prolonged psychological and financial 2026 SCC 16 (CanLII) abuse” (ibid.).
- RECOGNIZES A NEW TORT OF FAMILY VIOLENCE

# LEGAL HISTORY OF THE CASE

Ahluwalia v. Ahluwalia

2023 ONCA 476, 167 O.R. (3d) 561(Ontario Court of Appeal Decision)

- The issue was not whether family violence or coercive control was wrong, but rather whether there are “adequate alternative remedies” available and whether the change to the legal system wrought by the advent of a new tort would be “indeterminate or substantial”.
- OVERTURNS THE NEW TORT OF FAMILY VIOLENCE

# LEGAL HISTORY OF THE CASE

Ahluwalia v. Ahluwalia

2026 SCC 16 (Supreme Court of Canada Decision)

- Leave to appeal, granted
- 17 applications for leave to intervene, granted
- 2 Attorneys General
- 2 day hearing scheduled in February 2025
- Full panel of the court
- 5-1-3 Decision
- Every single opinion written is unequivocal on the scope of the problem of IPV and the need for a legal remedy.

# THE TORT OF IPV IN CANADA

The tort of intimate partner violence will be established where a plaintiff can demonstrate three elements:

1. Abusive conduct arose in an intimate relationship or its aftermath;
  2. The perpetrator intentionally engaged in the conduct, even if they did not intend to harm or control; and
  3. The conduct constitutes coercive control, which the court says will ordinarily be readily established with abuse in intimate relationships.
- THERE IS NO SEPARATE REQUIREMENT TO PROVE HARM

# OTHER IMPORTANT APPLICATIONS OF THE *AHLUWALIA* DECISION

- Description of intimate partner violence and coercive control that can be used in other legal contexts and as a tool for public awareness and education
- *“Coercive and controlling conduct has been deemed “the most serious type of violence in the family law context.” (para 119)*
- *“Intimate partner violence entails a pattern of coercion that can unfold slowly over time, and may or may not be punctuated by incidents of physical or emotional distress.... The victim’s range of action is narrowed, leaving the victim subject to subordination that may persist without further intervention by the abuser.” (para 132)*
- *“Whether through discrete abusive acts or patterns of harmful conduct, subordination of this kind reflects a lack of respect and further impugns the equality that each partner in the relationship is entitled to enjoy. Coercion and control replace mutuality with forced hierarchy, depriving one partner of the equal standing that is the foundation of any intimate partnership. Subordination in this context is not simply personal – it is incompatible with the principle of substantive equality” (para 135)*
- *“Put differently, under conditions of coercive control, the victim is no longer their partner’s equal; they are deprived, through abuse, of the freedom to make choices in relation to those things that matter the most to them, which can include whether to pursue a career, maintain a relationship with their family and friends, and generally to pursue their own happiness. Within an intimate partnership, autonomy and equality are legal interests that are both animated by dignity. When a victim of intimate partner violence has, by reason of abusive conduct that objectively constitutes coercive control, been deprived of their personal autonomy and equal place in the partnership, it undermines their dignity.” (para 200)*

# OTHER IMPORTANT APPLICATIONS OF THE *AHLUWALIA* DECISION

- Clear statements about the many forms intimate partner violence can take
- *"...The new tort dispels the mythology that intimate partner violence must be punctuated by egregious incidents of physical or psychological abuse..." (para 188)*
- *"...But coercive and controlling conduct faced by an intimate partner can also include: psychological, sexual or emotional violence; controlling behaviour such as stalking, monitoring activities and financial control; intimidation, threats to family members, or making false allegations to the police or to employers; litigation abuse; and preventing the victim from seeing family and friends, working, or participating in other educational or recreative activities" (para 187)*
- *"Intimate partner violence is more than the sum of its parts; it may involve physical violence, emotional abuse, or other methods of coercive control, but what the totality of that conduct produces takes a different meaning and quality in the context of an intimate partnership. In the context of intimacy, incidents of physical violence and emotional abuse that punctuate the relationship generally cause more than bodily and psychological harm. They can interfere with the victim's autonomy and create an unequal partnership, which constitutes a dignitary harm." (para 140)*
- *"...It may also include methods of control that are less visible or subtle, such as economic control of the victim, isolation from friends and family, monitoring day-to-day movements, or exploiting vulnerability. I reiterate that it may even include a single act of violence which, when understood in the context of the specific dynamics of the intimate partnership, objectively has the effect of subordinating an intimate partner to the other's control." (para 120)*

# OTHER IMPORTANT APPLICATIONS OF THE *AHLUWALIA* DECISION

- Recognition of various forms of violence that are often not properly identified or addressed in the legal system:

- *Economic abuse*
- *Post-separation violence, including litigation abuse*

*"...The personal connection, the intimacy that comes with such partnership, and the partners' interdependence and attending vulnerabilities shape the intimate partnership during its lifetime and can persist after separation or the formal end of the relationship. Co parenting, for example, often continues connections and interdependence between former partners. Some former partners continue cohabitating for some time post-separation until other accommodations can be arranged. But an abusive partner may seek to exploit past intimacy in other ways, such that the aftermath of the partnership is the site of controlling misconduct..." (para 185)*

*"The risk is further heightened by the fact that abusers frequently utilize litigation as a tool "to continue to dominate and maintain contact and control following separation" and to deflect attention from their own role as the aggressor (Neilson (2004), at p. 419). Litigation abuse – where intimate partners utilize the legal system as a tool "to coerce, control, harass, undermine and dominate" their intimate partners – is a well-documented tactic frequently employed by abusers to control survivors..." (para 194)*

# OTHER IMPORTANT APPLICATIONS OF THE *AHLUWALIA* DECISION

- Recognition of:
    - The gendered nature of intimate partner violence
    - The need for an intersectional, feminist analysis
- “...intimate partner violence is not experienced uniformly. Its 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” (para 122)*
- The need for judges to help facilitate access to justice for unrepresented survivors in family court

# **THE TORT OF IPV IN FAMILY LAW**

# THE TORT OF IPV IN CIVIL CLAIMS

- The compensatory nature of the civil law: these claims are about money, and what money represents
- Civil claims will not be helpful or right for all survivors
- There are a lot of lawyers still figuring this out... and so are the organizations supporting survivors.
- Ontario *Limitations Act* interpretations
  - *Possible area for law reform*
- Damages awards
  - Litigating these cases properly requires care and (often) investment...
- Narrowed scope from the tort of family violence recognized by the trial judge
  - The kids were left out of the scope of this remedy, and there is more work to do on that front.
- Releases signed on settlement
  - Survivors need to be aware that when they sign a release upon settlement in family court, they may be releasing a possible civil claim

# WHERE TO GO FROM HERE?

- Monitor developing case law
- Training and education for legal system professionals
- Addressing overburdened legal system to support implementation
- Mandatory screening
- Legal representation
- Public legal education
- Future law reform

# WHERE TO GO FROM HERE?

- Legal service options for unrepresented survivors:
  - Independent Legal Advice Program: <https://www.schliferclinic.com/independent-legal-advice-for-survivors-of-sexual-assault-in-ontario/>
  - Community organizations offering summary legal advice services (e.g. Luke's Place for family law advice: <https://lukesplace.ca/for-women/pro-bono-summary-advice-clinic/>)
  - Limited scope retainers with a family law lawyer: <https://www.yorku.ca/osgoode/flsd/directory/>

# **CLOSING REFLECTION**

# **QUESTIONS & DISCUSSION**