

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

AMRIT PAL SINGH AHLUWALIA

Applicant
(Appellant in Appeal)

- and -

KULDEEP KAUR AHLUWALIA

Respondent
(Respondent in Appeal)

**FACTUM OF THE INTERVENORS
BARBRA SCHLIFER COMMEMORATIVE CLINIC AND LUKE'S PLACE
(the "Intervenors")**

February 28, 2023

GILLIAN HNATIW & CO.
120 Adelaide Street West, Suite 2105
Toronto, Ontario M5H 1T1

Anna Matas (55305R)
anna@gillianandco.ca

Samantha Eisen (75449E)
samantha@gillianandco.ca
Tel: 416.825.5659 / Fax: 416.352.1526

**ARCHANA ARUN MEDHEKAR
PROFESSIONAL CORPORATION**
910-405 The West Mall,
Toronto, Ontario, M9C 5J1

Archana Arun Medhekar (50179Q)
Certified Family Law Specialist
amlaw@amlaw.ca
Tel: 416.977.4204 / Fax: 416.977.6352

**Lawyers for the Intervenor, Barbra
Schlifer Commemorative Clinic**

WOOD GOLD LLP

21 Queen St E, Suite 300
Brampton, Ontario L6W 3P1

Frances Wood (41088F)

frankie@woodgold.ca
Tel: 416.977.4204 / Fax: 416.977.6352

GOLDBLATT PARTNERS LLP

20 Dundas St W, Suite 1039
Toronto, Ontario M5G 2C2

Kirsten Mercer (54077J)

kmercerc@goldblattpartners.com
Tel: 416.977.6070 / Fax: 416.591.7333

Lawyers for the Intervenor, Luke's Place

TO: JASKOT WILLER GILL LLP

3310 South Service Rd, Suite 203
Burlington, Ontario L7N 3M6

Darryl A. Willer (45557V)

darryl@jwgfamilylaw.ca
Tel: 905.634.3155 / Fax: 905.634.3555

MALINA A. ROSHAN

Barrister and Solicitor
7895 Tranmere Dr, Suite 21
Mississauga, Ontario L5S 1V9

Malina A. Roshan (59052E)

mroshan@roshanlaw.com
Tel: 416.834.6428 / Fax: 905.677.6265

Lawyers for the Applicant (Appellant in Appeal)

AND TO: CARPENTER LAW FAMILY LAW PROFESSIONAL CORPORATION

700-700 Dorval Drive
Oakville, Ontario L6K 3V3

Geoffrey J. Carpenter (56726S)

geoff@carpenterlaw.ca
Tel: 905.842.0635 / Fax: 855.852.8970

Lawyers for the Appellant, Amrit Pal Singh Ahluwalia

AND TO: **ST. LAWRENCE BARRISTERS PC**
33 Britain St
Toronto, Ontario M5A 1R7

Alexi Wood (54683F)
alexi.wood@stlbarristers.ca

Lillianne Cadieux-Shaw (74936H)
lil.cadieux.shaw@stlbarristers.ca

Brooke MacKenzie (64135P)
brooke.mackenzie@stlbarristers.ca

Nicky (Yujeong) Kim (85526C)
nicky.kim@stlbarristers.ca

Tel: 647.245.2121 / Fax: 647.245.8285

**Lawyers for the Respondent,
Kuldeep Kaur Ahluwalia**

AND TO: **J K HANNAFORD BARRISTERS**
77 Bloor Street West, Suite 1703
Toronto, Ontario M5S 1M2

Julie Hannaford (24758S)
julie@jkhannaford.com

Charu Chande (LSO# 60580N)
cchande@jkhannaford.com

Angela Pagano (77105E)
apagano@jkhannaford.com

Tel: 416.203.5660 / Fax: 416.203.5661

**Lawyers for the Respondent,
Kuldeep Kaur Ahluwalia**

TABLE OF CONTENTS

	Page
PART I - OVERVIEW AND STATEMENT OF POSITION	1
PART II - THE FACTS	1
PART III - STATEMENT OF LAW AND ARGUMENT	2
A. Introduction to Family Violence	2
(i) Shifting Norms in the Face of a Still-pervasive Social Problem	2
(ii) The Evolution in Research and Policy to Adequately Define, Capture and Protect Against Family Violence	3
(iii) Family Violence is More than Coercive Control	3
B. Recognizing the Tort of Family Violence: An Incremental Step	6
C. Family Violence as Recognized in Canadian Law	6
(i) International Legal Recognition and Responses to Systemic Family Violence	9
D. Family Violence Cries Out for Remedy	10
E. Damages	12
PART IV - CONCLUSION	14
PART V - COSTS	15
SCHEDULE “A”	i
SCHEDULE “B”	v

PART I - OVERVIEW AND STATEMENT OF POSITION

1. The trial judge did not create the tort of family violence (“FV”): she simply recognized a right of action that responds to the complex and distinct wrongdoing arising from FV.
2. Her decision was correct and should be affirmed by this court because:
 - (a) An emerging acceptance of tort claims for FV is evident in the case law of Ontario, other Canadian provinces, and international jurisdictions.
 - (b) Recognition of this tort is supported by changes in legislation, including the statutory definition of FV codified in the *Divorce Act*¹ and the *Children’s Law Reform Act*.²
 - (c) Increased understanding that the conduct which underpins the tort of FV, is destructive, harmful, and fundamentally distinct from the conduct that constitutes existing torts.
 - (d) Recognition of the tort of FV is supported by the values of our legal system and is necessary to meet the evolving demands of our society.
 - (e) A piecemeal legal approach fails to adequately capture this tortious misconduct: with FV “the whole is more than the sum of its parts”.
3. The harms suffered by the Intervenors’ clients as a result of this wrongdoing vary in terms of scope and severity, but the facts of their cases all cry out for a remedy. The trial judge’s award of damages is based on factual findings that have not been appealed, and falls within an appropriate range based on established case law. The award should be upheld.

PART II - THE FACTS

4. The Intervenors take no position on the facts.

¹ *Divorce Act*, R.S.C., 1985, c. 3 (2nd Supp.) [“*Divorce Act*”].

² *Children’s Law Reform Act*, R.S.O. 1990, c. C.12 [“*Children’s Law Reform Act*”].

PART III -STATEMENT OF LAW AND ARGUMENT

A. Introduction to Family Violence

(i) Shifting Norms in the Face of a Still-pervasive Social Problem

5. The parties agree FV is a long-standing phenomenon and has reached epidemic proportions.³ According to a 2019 Statistics Canada report, almost half of women (44%) (6.2 million women) and a third of men (33%) (4.9 million men) who have been in an intimate relationship during their lifetime have experienced FV.⁴ The most common type reported was psychological abuse. In 2021, women and girls represented 69% of FV victims⁵ and alarmingly, rates of FV appear to be on the rise.⁶ The consequences of FV are physical, mental, cognitive, and financial; recovery depends on the length and severity of abuse.⁷ In its most extreme form, FV results in death: between 2002 and 2017, 390 Ontarians (81% of whom were women) were killed by their domestic partners.⁸

6. The costs of this violence are not just individual but affect the wider society. According to Justice Canada, “a considerable amount of Canadian resources are directed to address this issue including health care costs, costs to the justice system, to employers and businesses, and to social and community services”.⁹ In 2009, a study undertaken by the federal government conservatively

³ Factum of the Appellant, Amrit Pal Singh Ahluwalia, at para 44; Factum of the Respondent, Kuldeep Kar Ahluwalia at para 1.

⁴ Family violence often goes unreported, and it is likely that this data vastly underrepresents the level of family violence in Canada.

⁵ Statistics Canada, *Victims of police-reported family and intimate partner violence in Canada, 2021* (Ottawa: Statistics Canada, 2022), online: Statistics Canada <<https://www150.statcan.gc.ca/n1/daily-quotidien/221019/dq221019c-eng.htm>>.

⁶ Shana Conroy, “Family Violence in Canada: A statistical profile, 2019” Juristat no. 85-002-X (2021), online: Statistics Canada <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2021001/article/00001-eng.pdf?st=oWRgmQrj>>; Adam Cotter, “Intimate partner violence in Canada, 2018: An overview” Juristat no. 85-002-X (2021), online: Statistics Canada <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2021001/article/00003-eng.pdf?st=dX9nLVee>>.

⁸ Office of the Chief Coroner, Ontario Domestic Violence Death Review Committee, “Chapter 2: Statistical overview” in *Domestic Violence Death Review Committee 2018 Annual Report* (Toronto: Ministry of the Solicitor General, 2021) <<https://www.ontario.ca/document/domestic-violence-death-review-committee-2018-annual-report/chapter-2-statistical-overview#section-4>>.

⁹ Statistics Canada, *Family Violence in Canada*, *supra* note 5.

estimated that the annual cost of only one form of FV – intimate partner violence- was \$7.4 billion.¹⁰

(ii) The Evolution in Research and Policy to Adequately Define, Capture and Protect Against Family Violence

7. FV is abuse directed against one or more individuals that is perpetrated by a family member.¹¹ FV is complex and does not generally manifest as discrete incidents of abuse. It is characterized by a pattern of long-term and repetitive abuse, often in conjunction with coercive and controlling behaviour, which may include harassment, manipulation, economic abuse, physical violence, and psychological abuse.¹² The overarching goal of this abuse is to exert control and domination by one family member over another.

8. Recent changes to the *Divorce Act* and the *Children’s Law Reform Act* confirm that our legal understanding of FV as a system of abuse and control is evolving. Legislative changes were made at the urging of advocates and experts based upon extensive social science evidence about FV: how it manifests, how it harms survivors, the damage caused by non-physical FV and the need for improved approaches by the justice system to address the issue and associated harms.

(iii) Family Violence is More than Coercive Control

9. The term *coercive control* has emerged over the last decade to describe one aspect of abuse of one intimate partner by another or abuse within a family. It is defined as “an ongoing process

¹⁰ Ting Zang, et. al., “An Estimation of the Economic Impact of Spousal Violence in Canada, 2009” (2012) online: Department of Justice Canada <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12_7/rr12_7.pdf>.

¹¹ *Divorce Act*, supra note 1, s. 2(1); *Children’s Law Reform Act*, supra note 2, s. 18.(1).

¹² *Divorce Act*, supra note 1, s. 2(1); *Children’s Law Reform Act*, supra note 2, s. 18.(1); Barbra Schlifer Commemorative Clinic, “Intimate Partner Violence Risk Identification and Assessment Tool User Guide” in *Project Enhanced Safety: Risk Assessment Framework in Family Court – Final Report* (Toronto: Barbra Schlifer Commemorative Clinic, 2020) <<https://www.schliferclinic.com/wp-content/uploads/2021/04/PROJECT-ENHANCED-SAFETYFINAL2021.pdf>>; Linda C. Neilson, “Part 6: Risk Assessment, Continuing Domestic Violence” in *Enhancing safety: When domestic violence cases are in multiple legal systems (criminal, family, child protection): A family law, domestic violence perspective* (Toronto: Family, Children and Youth Section, Department of Justice Canada, 2013).

whereby abusers use various means, including often, but not always, escalating physical violence, to hurt, humiliate, intimidate, exploit, isolate, and dominate their victims”,¹³ leading to devastating outcomes for survivors.¹⁴

10. Survivors of systemic FV often experience diminished confidence, a loss of autonomy, flashbacks, anxiety, and post-traumatic stress disorder. They may have difficulty maintaining employment, enjoying social interactions, and developing new and healthy intimate relationships.¹⁵

11. Recently amended legislation identifies the essential characteristic of FV as its compounding and systemic nature. This has been overlooked and underestimated, but the Intervenor’s experience with survivors of FV confirms the inter-operativity of these forms of wrongdoing, which exceed the harm caused solely by coercive control, but which work as a system to assert control within the family realm and which cause the harms particular to FV. Whether a survivor’s reaction to this form of abuse is fear or submission, the result is intimidation, isolation, and degradation for the survivor, and control for the perpetrator.

12. These harms can exacerbate the social barriers already present for survivors with intersecting vulnerabilities.¹⁶ Marginalized women have “compounding and interrelated

¹³ Andy Myhill, “Measuring Coercive Control: What Can We Learn From National Population Surveys?” (2015) 21:3 Violence Against Women 355 at 357; see also Stark, “The Dangers of Dangerousness Assessment”, *infra* note 14 at 18.

¹⁴ Myhill, “Measuring Coercive Control”, *supra* note 13 at 363: UK surveys showed that victims of coercive controlling behaviour were 2.5 times more likely to experience “mental or emotional problems” as compared to victims of situational violence. This study also showed that coercive control affects the ability of victims to undertake paid work more than situation violence. Evan Stark, “The Dangers of Dangerousness Assessment” (2013) 6:2 Family & Intimate Partner Violence Quarterly 13 at 18.

¹⁵ Fiona Kelly, “Private Law Responses to Domestic Violence: The Intersection of Family Law and Tort” (2009) 44:2 Sup Ct L Rev 321 at 322.

¹⁶ Kelly, “Private Law Responses to Domestic Violence”, *supra* note 16 at 322, citing Janet Mosher et al, “Walking on Eggshells: Abused Women’s Experiences of Ontario’s Welfare System” (2004) Commissioned Reports and Studies.

individual, familial, cultural, social and systemic level risk factors,”¹⁷ which can aggravate the magnitude of their harms. These additional barriers and compounding factors of oppression must be accounted for when accessing services or resources, or when crafting remedial intervention.¹⁸

13. Recognizing the tort of FV is an appropriate remedial response.

14. Canadian equality jurisprudence signal that courts must consider the impact of intersecting identities and place intersectional¹⁹ experiences and voices of women (including marginalized women) at the centre of the analysis, to understand both the roots of FV and how, by its nature, it impedes women’s ability to escape it.²⁰ Substantive equality is concerned with equitable outcomes and equal opportunities for marginalized individuals and groups.²¹ It is a “fundamental constitutional value that is relevant to every area of law and practice.”²²

15. The recognition of the tort of FV represents a path to substantive equality for many marginalized survivors with experience of intersecting oppression and FV.²³

¹⁷ Sarah Yercich & Kate Rossiter, “Immigrant and Refugee Populations” in Nicole Jeffrey et al., ed, *Canadian Domestic Homicide Prevention Initiative with Vulnerable Populations (CDHPiVP) Literature Review on Risk Assessment, Risk Management and Safety Planning* (London: Canadian Domestic Homicide Prevention Initiative, 2018), online: <<https://www.cdhipi.ca/literature-review-report>>.

¹⁸ Jennifer Nixon & Cathy Humphreys, “Marshalling the Evidence: Using Intersectionality in the Domestic Violence Frame” (2010) 17:2 *Social Politics* 137 at 147, 151 169, and 173; Robyn Maynard, *Policing Black Lives: State violence in Canada from slavery to the present* (Winnipeg: Fernwood Publishing, 2017) at 186; Schlifer Clinic, “Intimate Partner Violence Risk Identification and Assessment Tool User Guide”, *supra* note 12, at p. 93.

¹⁹ *Intersectionality describes the unique forms of discrimination, oppression and marginalization that can result from the interplay of two or more identity-based grounds of discrimination* per Intersectionality in law and legal Context, LEAF chrome-extension://efaidnbmnnnibpcajpcgleclefindmkaj/https://www.leaf.ca/wp-content/uploads/2020/10/Full-Report-Intersectionality-in-Law-and-Legal-Contexts.pdf

²⁰ Janet E. Mosher, “Grounding Access to Justice Theory and Practice in the Experiences of Women Abused by Their Intimate Partners” (2015) 32 *Windsor Y B Access Just* 149.

²¹ *Fraser v. Canada*, 2020 SCC 28 at para 47.

²² Donna Martinson & Margaret Jackson, “Family Violence and Evolving Judicial Roles: Judges as Equality Guardians in Family Law Cases” (2017) 30 *Can. J. Fam. L.* 11. at 13.

²³ Martinson & Jackson, “Family Violence and Evolving Judicial Roles” *supra* note 22.

B. Recognizing the Tort of Family Violence: An Incremental Step

16. The need to protect, support and restore survivors of FV has been recognized at the provincial, national, and international level, through jurisprudence and policy, including recent amendments to the Federal *Divorce Act* and Ontario's *Children's Law Reform Act* and conventions such as the *Convention on the Elimination of All Forms of Discrimination Against Women* ("CEDAW").²⁴

17. Historically, there have been very limited, piecemeal civil remedies for survivors of FV, and existing remedies were poorly suited to the realities that survivors experience or the remedies that they seek.²⁵ Despite improvements in the legal response to FV in the criminal and family law, less development has occurred within the civil realm, where the established torts continued to treat FV as a series of discreet incidents. The trial judge built upon policy and legislative developments to bring the civil law into line with the direction of legislators and experts.

C. Family Violence as Recognized in Canadian Law

18. The trial judge's recognition of the tort of FV is consistent with the courts' approach to recognizing other novel torts. As in *Jones v. Tsige*, the trial judge was guided by existing scholarship and legislative recognition of the systemic and nuanced nature of FV, taking her cue from recent Canadian legislative development and best practices.²⁶ In light of the expanding Canadian and international understanding of FV as a compounding and nuanced system of abuse, the trial judge acknowledged that civil admonition of this social harm is necessary and timely. As

²⁴ United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979" (1979), online: United Nations Human Rights Office of the High Commissioner <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>>.

²⁵ Factum of the Respondent, Kuldeep Kaur Ahluwalia at paras 22-27.

²⁶ *Jones v. Tsige*, 2012 ONCA 32.

in other instances in which the courts recognize a novel tort²⁷, this was a “small step along a well-established path”²⁸ which already acknowledges the reality that survivors experience nuanced and complex harms arising from FV differently from the harms arising from episodic violence or discrete incidents of other forms of abuse.²⁹

19. This growing national and international recognition is also reflected in legislation, international treaties and both Canadian and international common law jurisprudence. Canadian governments have recognized the harms associated with FV through the enactment of legislation in the realms of family law³⁰, child protection³¹, the *Criminal Code*³², civil claims, immigration, housing, social assistance, employment law, and privacy law.³³

20. Shifting international norms towards improved acknowledgement of FV and gender-based violence (“GBV”) are reflected in CEDAW³⁴. As a signatory, Canada is legally required³⁵ to implement CEDAW standards by enshrining protections against FV and GBV in domestic legal

²⁷ *Yenovkian v. Gulian*, 2019 ONSC 7279.

²⁸ *Owsianik v. Equifax Canada Co.*, 2022 ONCA 813 at para. 63.

²⁹ *Yenovkian*, *supra* note 27.

³⁰ *Divorce Act*, *supra* note 1.

³¹ *Divorce Act*, *supra* note 1.

³² In 1983, the *Criminal Code* was amended to add spousal rape language (see Bill C-127, Act to amend the *Criminal Code* in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof, S.C. 1980-81-82-83, c. 125). In 1996, the *Criminal Code* was amended to codify violence within intimate partnerships as an aggravating factor in sentencing (see Bill C-41, *An Act to Amend the Criminal Code (Sentencing) and Other Acts in Consequence Thereof*, S.C. 1995, c. 22).

³³ Many provinces and territories have adopted similar legislation to the *Divorce Act* and *Children’s Law Reform Act* to address family violence in relation to family law legislation. Six provinces and three territories have legislation directly related to family violence in the form of protection orders. For a full list of provincial legislation relating to family violence, see: Jennifer Koshan, Janet Mosher, and Wanda Wiegers, “Domestic Violence and Access to Justice: A Mapping of Relevant Laws, Policies and Justice System Components Across Canada” (2022) Canadian Legal Information Institute, 2020 CanLIIDocs 3160 <<https://canlii.ca/t/szxl>>.

³⁴ United Nations Human Rights Treaty Bodies, *Committee on the Elimination of Discrimination Against Women (CEDAW)*, online: United Nations Human Rights Office of the High Commissioner <https://www.ohchr.org/en/treaty-bodies/cedaw>.

³⁵ *R. v. Ewanchuck*, 1999 CanLII 711 (SCC), [1999] 1 SCR 330 at para 70. See also *Michael v. Graydon*, 2020 SCC 24 at para 103; *Chan v. Canada*, [1995] 3 S.C.R. 593 at para 88.

structures as part of a normative shift towards recognizing the multiple intersecting forms of violence experienced by women and to protect women from these forms of violence.³⁶

21. Canadian jurisprudence continues to advance and reflect the need to acknowledge the pernicious and devastating impact of FV within Canadian society. In the criminal sphere, the Supreme Court has recognized the devastating impact of intimate partner violence, and courts at all levels have cautioned against succumbing to myths about FV. In *R v Lavallee*, the Supreme Court recognized battered wife syndrome, and resisted reliance on myths about FV.³⁷ And a few months ago, this court again reaffirmed the importance of denouncing FV in sentencing.³⁸

22. In family courts, the law has evolved to incorporate spousal misconduct into the analysis of parenting decision-making³⁹, mobility requests⁴⁰, Hague applications⁴¹ and even a spouse's ability to achieve self-sufficiency in the context of spousal support claims⁴². In recent years, courts have recognized that what constitutes FV under the *Divorce Act* is expanding and the legislative list of behaviours is non-exhaustive.⁴³

23. There are indications, beyond the instant case, that the civil law will follow the increasing concern about and understanding of the pervasive forms that FV takes, and the resulting harms evident in other areas of Canadian jurisprudence. In 2021, the BC Supreme Court awarded damages for the tort of battery in the sum of \$795,029 including non-pecuniary damages, cost of

³⁶ Committee on the Elimination of Discrimination against Women (CEDAW), *Ms. A.T. v. Hungary*, 32nd Sess., Communication No. 2/2003, U.N. Doc. CEDAW/C/32/D/2/2003 (2005). See also CEDAW *General Recommendation No. 21: Equality in Marriage and Family Relations*, 13th Sess., U.N. Doc. A/49/38 (1994); CEDAW, *General Comment No. 19: Violence Against Women*, 11th Sess., U.N. Doc. A/47/38 (1992); CEDAW *General Recommendation No. 12: Violence Against Women*, 8th Sess., U.N. Doc. (1989).

³⁷ *R. v. Dounis*, 2011 ONSC 2301.

³⁸ *R. v. Cunningham*, 2023 ONCA 36 at paras 26-34.

³⁹ *Ammar v. Smith*, 2021 ONSC 3204 at paras 44, 58(h) and (j).

⁴⁰ *Barendregt v. Grebliunas*, 2022 SCC 22.

⁴¹ See e.g., *Sabeahat v. Sabihat*, 2020 ONSC 2784.

⁴² *Leskun v. Leskun*, 2006 SCC 25, [2006] 1 SCR 920 at para 21.

⁴³ *Armstrong v. Coupland*, 2021 ONSC 8186 at para 21.

future care, lost of income and special damages. This decision took into account not only the battery itself, but the ongoing emotional trauma and fear the plaintiff (wife) experienced as a result of the battery by the defendant (husband).⁴⁴

(i) International Legal Recognition and Responses to Systemic Family Violence

24. Canadian courts can look to other common law jurisdictions in considering the evolution of the common law through recognition of a novel tort. To that end, the Intervenor note that several other countries have taken steps to recognize the harms of FV and/or compensate survivors.

25. In 2015, the United Kingdom criminalized coercive control.⁴⁵ In 2018, Ireland followed suit.⁴⁶ And in 2011, Australia introduced the *Family Law Legislation Amendment (Family Violence and Other Measures) Act* to broaden the definition of FV under Australian family law.⁴⁷

26. In some instances, U.S. jurisprudence has adopted an approach to FV that reflects the same complex and integrated understanding of the harm arising from FV as the trial judge took in this case. Several state supreme courts and appellate courts have held that the tort of intentional infliction of emotional distress (“IIED”) may be applied to cases involving intimate relationships.⁴⁸ Other state courts have recognized torts at common law, including a “battered woman syndrome” tort, that comprehend the physical and psychological violence that may occur on a continuing basis

⁴⁴ *Schuetze v. Pyper*, 2021 BCSC 2209. This case is under appeal, but again it shows Canadian courts’ willingness to recognize in appropriate cases that the harms suffered by survivors of domestic violence are vast and complex.

⁴⁵ United Kingdom, *Serious Crime Act*, 2015 c.9, s. 76.

⁴⁶ Ireland, *Domestic Violence Act 2018*, No. 6 of 2018, s. 39.

⁴⁷ Australia, *Family Law Legislation Amendment (Family Violence and Other Measures) Act*, No. 189, 2011.

Pursuant to this Act, Family Violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family or causes the family member to be fearful.

⁴⁸ *Simmons v. Simmons*, 773 P.2d 602 (Colo. Ct. App. 1988); *McCoy v. Cooke*, 419 N.W.2d 44 (Mich. Ct. App. 1988); *Hakkila v. Hakkila*, 812 P.2d 1320 (N.M. Ct. App. 1991); *Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993); *Feltmeier v. Feltmeier*, 207 Ill. 2d 263 (Ill. App. Ct., 2007).

over the course of a relationship.⁴⁹ Some U.S. states have also established statutory torts that provide a cause of action for either intimate partner violence or gender-motivated violence.⁵⁰

27. In *Giovine v. Giovine*, an New Jersey court affirmed that the physical and emotional injuries sustained over time during a marriage are part of a “continuous” tort,⁵¹ and in *Pugliese v. Superior Court*, the Court of Appeal of California found that FV should be understood not as a series of discrete incidents but rather as an integrated pattern of violence.⁵²

D. Family Violence Cries Out for Remedy

28. When considering what types of cases “cry out for a remedy”, courts look to the facts of the case before them. Here, the trial judge held that “the relevant factual context is the entire 16-year pattern of emotional, mental, and psychological abuse, coupled with an inherent breach of trust.”⁵³ None of the trial judge’s factual findings are under appeal.

29. Courts also consider whether adequate remedies already exist. The nature of FV differs fundamentally from the wrongs that underlie assault, battery, and IIED. The Intervenors adopt the description at paras. 43-49 of the Respondent’s factum regarding to the inadequacy of these existing torts to capture the conduct that has been recognized in the tort of FV.

30. The harms experienced by survivors of FV cannot be addressed through a patchwork of established torts which fail to address (and thus cannot adequately remedy) the prolonged and compounding systemic abuse within a relationship of trust and confidence. To address the complex

⁴⁹ *Cusseaux v. Pickett*, 652 A.2d 789 (N.J. Super. Ct. Law Div. 1995); *Giovine v. Giovine*, 663 A.2d 109, 114, 123–24 (N.J. Super. Ct. App. Div. 1995), overruled on other grounds by *Kinsella v. Kinsella*, 696 A.2d 556 (N.J. Sup. Ct. 1997); *Jewett v. Jewett*, No. 93-2-01846-5 (Wash. Super. Ct. Spokane Cnty. 1993).

⁵⁰ *Gender Violence Act*, § 740 ILCS 82/1 et seq. (Illinois); *Victims of Gender-Motivated Violence Protection Act*, N.Y.C. Code § 8-901, et seq. (New York); Nev. Rev. Stat. § 41.134 (Nevada); Cal. Civ. Code §§ 52.4, 1708.6 (California).

⁵¹ *Giovine*, *supra* note 49 at para 13.

⁵² *Pugliese v. Superior Court*, 53 Cal. Rptr. 3d 681. (Cal. App. 2d Dist. 2007) at para 48.

⁵³ [Ahluwalia v. Ahluwalia](#), 2022 ONSC 1303 at para 48.

and systemic harms that survivors experience, an equally integrated and comprehensive approach is required. Simply adding a new tort of coercive control, will leave survivors to piece together a patchwork of remedies into a quilt that is both poorly-fitted and ill-suited to the nature of their experience. An adequate civil response to FV requires a distinct and novel remedy.

31. If an abuser only- but always - beats his partner on Mondays, the civil law has previously recognized this as a once-a-week problem: one day of brutal violence (remediable in tort) and six days of “peace” (with no need of a remedy). This absurdity highlights precisely the failure of the existing civil law. In reality, the six days between beatings are not days of peace, but of real harm which is inextricable from the acts of physical violence. Survivors often literally *live* with the source of the harm that they suffer. To adequately address this harm, the law must offer a remedy that responds to this intimacy and complexity and which addresses the harm and violation experienced not only during an incident of abuse but also in the period between the discrete instances of abuse, as well as the overall breach of trust and complex impact of systemic violence on the lives of survivors.

32. Although some survivors have sought and obtained civil remedies in some cases, the number of reported decisions is nominal compared to the prevalence of FV in our society. Until the tort of FV was recognized at common law, significant barriers prevented survivors from advancing claims that respond to the complex systems of FV that they experience: a patchwork solution whereby survivors are ill-equipped to determine which torts might remedy the specific abuse they have suffered and marshal the appropriate evidence to support their claims.

33. As in *Tsige*, the facts on which the tort of FV is based were “deliberate, prolonged, and shocking,”⁵⁴ and any person in the Respondent’s position would be profoundly harmed by such a

⁵⁴ *Tsige*, *supra* note 26, at para 69.

pattern of behaviour.⁵⁵ Like in *Caplan v. Atas*, the trial judge in this case found that there were no other legal remedies available to adequately address the impugned conduct. The court in *Atas* therefore recognized a new tort because “the law’s response to [the] conduct has not been sufficient, and traditional remedies available in defamation law are not sufficient to address *all aspects* of [the] conduct.”⁵⁶ Notwithstanding the trial judge’s alternative findings with respect to assault/battery and IIED, none of those torts capture *all aspects* of the Appellant’s conduct. This left a gap in our law which the trial judge closed with the tort of FV.

34. In considering whether FV amounts to circumstances that “cry out for a remedy”, courts should consider the broader social context in which the conduct takes places. For example, in *Tsige, Doe 464533*, and *Atas* the courts looked at the intersection between modern technology and harm caused by the wrongdoing. Here, the court considered the FV in the context of equality, intersectionality and the scourge of FV as a devastating and far-reaching social problem.⁵⁷

35. The harmonized approach taken by the trial judge in recognizing the tort of family violence gives judges the ability to consider FV holistically in differently-situated women’s lives and allows the law to fully capture the damages and harms as they manifest differently based on social and family supports, place of residence, linguistic abilities, economic circumstances, structural oppressions, and other factors for any individual woman.

E. Damages

36. Due to the cyclical and systemic nature of FV, in many cases FV compounds the harms suffered by survivors over several years of discrete incidents of violence.⁵⁸ Damage awards for

⁵⁵ *Tsige*, *supra* note 26, at para 69.

⁵⁶ *Caplan v. Atas*, 2021 ONSC 670, at para 174. [Emphasis added.]

⁵⁷ *Ahluwalia*, *supra* note 53, at paras 58-70.

⁵⁸ Mary Ann Dutton and Lisa A. Goodman, “Coercion in Intimate Partner Violence: Toward a New Conceptualization” 52:11/12 *Sex Roles* 743 at 753. See also Myhill, “Measuring Coercive Control”, *supra* note 13.

discrete torts do not adequately compensate survivors for the complex, compounding and systemic nature of the true harm of FV: a cycle that strips survivors of their autonomy and dignity, and submits them to domination by the perpetrator.

37. The concept of *restitutio in integrum*, central to the civil law's understanding of damages, is often so far from the mind of survivors as to be almost inconceivable. Often survivors are just trying to escape a web of violence and control with their lives and their children's safety. This dystopian irony means that perpetrators of FV, by creating such a significant degree of harm, actually render a prospective plaintiff unable to hold them accountable.

38. In the face of this impunity, the law should help (not hinder) those who want to seek redress in an effort to repair the harm they have suffered and sanction this anti-social conduct through significant damages awards. Damages for the tort of FV would also help survivors to secure a place of safety for themselves and their children, to re-establish their lives and to begin rebuilding all that was taken from them. This holistic approach allows judges to fully capture the damages and harms before them, which will have different manifestations based on the social and family supports, place of residence, linguistic abilities, economic circumstances, structural oppressions, etc. of any individual woman.

39. As noted by Professor Fiona Kelly of the University of British Columbia Law School the civil law has the potential to advance economic justice for survivors.⁵⁹ Damage awards, especially punitive damages, have the potential to draw public attention to the particularly egregious nature of FV, and ultimately to condemn it.⁶⁰

⁵⁹ Kelly, "Private Law Responses to Domestic Violence", *supra* note 15, at 325.

⁶⁰ Kelly, "Private Law Responses to Domestic Violence", *supra* note 15, at 326

40. Even when survivors of FV have relied upon other torts to try to address the harms that they have suffered, the relatively limited damages awarded have reflected the court's historic reluctance to intervene in the "private" domestic sphere. The quantum of damages awarded often has not adequately compensated survivors of FV for the life-altering harms they have experienced.

PART IV - CONCLUSION

41. Until the trial judge's decision in this case, Canadian law lacked a civil remedy that adequately responded to the complex, systemic and compounding nature of FV on the whole, and particularly the impact of systematic abuse that exists between specific "events" of physical violence. The trial judge notes:

existing torts do not fully capture 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. These patterns can be cyclical and subtle, and often go beyond assault and battery to include complicated and prolonged psychological and financial abuse. These uniquely harmful aspects of family violence are not adequately captured in the existing torts.⁶¹

42. The damages awarded by the trial judge were appropriate and, if anything, were not sufficient in the Intervenors' view, to adequately redress the harms suffered by the Plaintiff. Damage awards should reflect society's goals of supporting survivors to leave FV and to enabling survivors to be in a position, once they have left the violence, to secure the supports they require to heal and contribute to society in a meaningful way. That's what is required to "make them whole".

43. The Intervenors concur with the adage that "there is no medium of exchange for happiness... No money can provide true restitution."⁶² However, for survivors of FV, compensation for the harm they have experienced at the hand of their abuser would be a good place to start.

⁶¹ *Ahluwalia*, *supra* note 53, at para 54.

⁶² *Andrews v. Grand & Toy Alberta Ltd.*, 1978 CanLII 1 (SCC), [1978] 2 SCR 229.

PART V - COSTS

44. The Intervenors are not seeking costs and ask that no costs be ordered against them.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,



PER:

February 28, 2023

Anna Matas / Samantha Eisen / Archana
Medhekar / Frances Wood / Kirsten Mercer

**Lawyers for the Co-Intervenors, Luke's Place
and Barbra Schlifer Commemorative Clinic**

SCHEDULE “A”
LIST OF AUTHORITIES

Case Law

1. [*Fraser v. Canada*, 2020 SCC 28](#)
2. [*Jones v. Tsige*, 2012 ONCA 32](#)
3. [*Yenovkian v. Gulian*, 2019 ONSC 7279](#)
4. [*Owsianik v. Equifax Canada Co.*, 2022 ONCA 813](#)
5. [*R. v. Ewanchuck*, 1999 CanLII 711 \(SCC\), \[1999\] 1 SCR 330](#)
6. [*Michael v. Graydon*, 2020 SCC 24](#)
7. [*Chan v. Canada*, \[1995\] 3 S.C.R. 593](#)
8. [*R. v. Dounis*, 2011 ONSC 2301](#)
9. [*R v. Cunningham*, 2023 ONCA 36](#)
10. [*Ammar v. Smith*, 2021 ONSC 3204](#)
11. [*Barendregt v. Grebliunas*, 2022 SCC 22](#)
12. [*Sabeahat v. Sabihat*, 2020 ONSC 2784](#)
13. [*Leskun v. Leskun*, 2006 SCC 25, \[2006\] 1 SCR 920](#)
14. [*Armstrong v. Coupland*, 2021 ONSC 8186](#)
15. [*Schuetze v. Pyper*, 2021 BCSC 2209](#)
16. *Simmons v. Simmons*, 773 P.2d 602 (Colo. Ct. App. 1988)
17. *McCoy v. Cooke*, 419 N.W.2d 44 (Mich. Ct. App. 1988)
18. *Hakkila v. Hakkila*, 812 P.2d 1320 (N.M. Ct. App. 1991)
19. *Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993)
20. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263 (Ill. App. Ct., 2007)
21. *Cusseaux v. Pickett*, 652 A.2d 789 (N.J. Super. Ct. Law Div. 1995)
22. *Giovine v. Giovine*, 663 A.2d 109, 114, 123–24 (N.J. Super. Ct. App. Div. 1995)

23. *Kinsella v. Kinsella*, 696 A.2d 556 (N.J. Sup. Ct. 1997)
24. *Jewett v. Jewett*, No. 93-2-01846-5 (Wash. Super. Ct. Spokane Cnty. 1993)
25. *Pugliese v. Superior Court*, 53 Cal. Rptr. 3d 681. (Cal. App. 2d Dist. 2007)
26. [*Ahluwalia v. Ahluwalia*, 2022 ONSC 1303](#)
27. [*Caplan v. Atas*, 2021 ONSC 670](#)
28. [*Andrews v. Grand & Toy Alberta Ltd.*, 1978 CanLII 1 \(SCC\), \[1978\] 2 SCR 229](#)

Secondary Sources

29. Statistics Canada, *Victims of police-reported family and intimate partner violence in Canada, 2021* (Ottawa: Statistics Canada, 2022), online: Statistics Canada <<https://www150.statcan.gc.ca/n1/daily-quotidien/221019/dq221019c-eng.htm>>.
30. Shana Conroy, “Family Violence in Canada: A statistical profile, 2019” Juristat no. 85-002-X (2021), online: Statistics Canada <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2021001/article/00001-eng.pdf?st=oWRgmQrj>>
31. Adam Cotter, “Intimate partner violence in Canada, 2018: An overview” Juristat no. 85-002-X (2021), online: Statistics Canada <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2021001/article/00003-eng.pdf?st=dX9nLVee>>
32. Office of the Chief Coroner, Ontario Domestic Violence Death Review Committee, “Chapter 2: Statistical overview” in *Domestic Violence Death Review Committee 2018 Annual Report* (Toronto: Ministry of the Solicitor General, 2021) <<https://www.ontario.ca/document/domestic-violence-death-review-committee-2018-annual-report/chapter-2-statistical-overview#section-4>>
33. Ting Zang, et. al., “An Estimation of the Economic Impact of Spousal Violence in Canada, 2009” (2012) online: Department of Justice Canada <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12_7/rr12_7.pdf>
34. Barbra Schlifer Commemorative Clinic, “Intimate Partner Violence Risk Identification and Assessment Tool User Guide” in *Project Enhanced Safety: Risk Assessment Framework in Family Court – Final Report* (Toronto: Barbra Schlifer Commemorative Clinic, 2020) <<https://www.schliferclinic.com/wp-content/uploads/2021/04/PROJECT-ENHANCED-SAFETYFINAL2021.pdf>>
35. Linda C. Neilson, “Part 6: Risk Assessment, Continuing Domestic Violence” in *Enhancing safety: When domestic violence cases are in multiple legal systems (criminal, family, child protection): A family law, domestic violence perspective* (Toronto: Family, Children and Youth Section, Department of Justice Canada, 2013).

36. Andy Myhill, “Measuring Coercive Control: What Can We Learn From National Population Surveys?” (2015) 21:3 *Violence Against Women* 355
37. Evan Stark, “The Dangers of Dangerousness Assessment” (2013) 6:2 *Family & Intimate Partner Violence Quarterly* 13
38. Fiona Kelly, “Private Law Responses to Domestic Violence: The Intersection of Family Law and Tort” (2009) 44:2 *Sup Ct L Rev* 321
39. Janet Mosher et al, “Walking on Eggshells: Abused Women’s Experiences of Ontario’s Welfare System” (2004) *Commissioned Reports and Studies*
40. Sarah Yercich & Kate Rossiter, “Immigrant and Refugee Populations” in Nicole Jeffrey et al., ed, *Canadian Domestic Homicide Prevention Initiative with Vulnerable Populations (CDHPiVP) Literature Review on Risk Assessment, Risk Management and Safety Planning* (London: Canadian Domestic Homicide Prevention Initiative, 2018), online: <<https://www.cdhpi.ca/literature-review-report>>
41. Jennifer Nixon & Cathy Humphreys, “Marshalling the Evidence: Using Intersectionality in the Domestic Violence Frame” (2010) 17:2 *Social Politics* 137
42. Robyn Maynard, *Policing Black Lives: State violence in Canada from slavery to the present* (Winnipeg: Fernwood Publishing, 2017)
43. Donna Martinson & Margaret Jackson, “Family Violence and Evolving Judicial Roles: Judges as Equality Guardians in Family Law Cases” (2017) 30 *Can. J. Fam. L.* 11
44. Intersectionality describes the unique forms of discrimination, oppression and marginalization that can result from the interplay of two or more identity-based grounds of discrimination per Intersectionality in law and legal Context, LEAF chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.leaf.ca/wp-content/uploads/2020/10/Full-Report-Intersectionality-in-Law-and-Legal-Contexts.pdf
45. Janet E. Mosher, “Grounding Access to Justice Theory and Practice in the Experiences of Women Abused by Their Intimate Partners” (2015) 32 *Windsor Y B Access Just* 149
46. United Nations General Assembly, “Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979” (1979), online: United Nations Human Rights Office of the High Commissioner <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>>.
47. Jennifer Koshan, Janet Mosher, and Wanda Wiegers, “Domestic Violence and Access to Justice: A Mapping of Relevant Laws, Policies and Justice System Components Across Canada” (2022) *Canadian Legal Information Institute*, 2020 *CanLIIDocs* 3160 <<https://canlii.ca/t/szxl>>

48. Committee on the Elimination of Discrimination against Women, *Ms. A.T. v. Hungary*, 32nd Sess., Communication No. 2/2003, U.N. Doc. CEDAW/C/32/D/2/2003 (2005)
49. Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 21: Equality in Marriage and Family Relations*, 13th Sess., U.N. Doc. A/49/38 (1994)
50. Committee on the Elimination of Discrimination Against Women, *General Comment No. 19: Violence Against Women*, 11th Sess., U.N. Doc. A/47/38 (1992)
51. Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 12: Violence Against Women*, 8th Sess., U.N. Doc. (1989)
52. Mary Ann Dutton and Lisa A. Goodman, "Coercion in Intimate Partner Violence: Toward a New Conceptualization" 52:11/12 *Sex Roles* 743

SCHEDULE “B”
RELEVANT STATUTES

[Divorce Act, R.S.C., 1985, c. 3 \(2nd Supp.\)](#)

Definitions

2 (1) In this Act,

age of majority, in respect of a child, means the age of majority as determined by the laws of the province where the child habitually resides, or, if the child habitually resides outside of Canada, eighteen years of age; (*majeur*)

appellate court, in respect of an appeal from a court, means the court exercising appellate jurisdiction with respect to that appeal; (*cour d’appel*)

applicable guidelines means

- (a) if both spouses or former spouses are habitually resident in the same province at the time an application is made for a child support order or for a variation order in respect of a child support order or the amount of a child support is to be calculated or recalculated under [section 25.01](#) or [25.1](#), and that province has been designated by an order made under subsection (5), the laws of the province specified in the order, and
- (b) in any other case, the [Federal Child Support Guidelines](#); (*lignes directrices applicables*)

child of the marriage means a child of two spouses or former spouses who, at the material time,

- (a) is under the age of majority and who has not withdrawn from their charge, or
- (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life; (*enfant à charge*)

child support order means an order made under [subsection 15.1\(1\)](#); (*ordonnance alimentaire au profit d’un enfant*)

competent authority means, except as otherwise provided, a tribunal or other entity in a country other than Canada, or a subdivision of such a country, that has the authority to make a decision under their law respecting any subject matter that could be dealt with under this Act; (*autorité compétente*)

contact order means an order made under [subsection 16.5\(1\)](#); (*ordonnance de contact*)

corollary relief proceeding means a proceeding in a court in which either or both former spouses seek a child support order, a spousal support order or a parenting order; (*action en mesures accessoires*)

court, in respect of a province, means

- (a) for the Province of Ontario, the Superior Court of Justice,
- (a.1) for the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court of the Province,
- (b) for the Province of Quebec, the Superior Court,
- (c) for the Provinces of Nova Scotia, British Columbia and Prince Edward Island, the Supreme Court of the Province,
- (d) for the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, the Court of Queen’s Bench for the Province, and
- (e) for Yukon or the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice,

and includes such other court in the province the judges of which are appointed by the Governor General as is designated by the Lieutenant Governor in Council of the province as a court for the purposes of this Act; (*tribunal*)

custody[Repealed, [2019, c. 16, s. 1](#)]

custody order[Repealed, [2019, c. 16, s. 1](#)]

decision-making responsibility means the responsibility for making significant decisions about a child’s well-being, including in respect of

- (a) health;
- (b) education;
- (c) culture, language, religion and spirituality; and
- (d) significant extra-curricular activities; (*responsabilités décisionnelles*)

divorce proceeding means a proceeding in a court in which either or both spouses seek a divorce alone or together with a child support order, a spousal support order or a parenting order; (*action en divorce*)

family dispute resolution process means a process outside of court that is used by parties to a family law dispute to attempt to resolve any matters in dispute, including negotiation, mediation and collaborative law; (*mécanisme de règlement des différends familiaux*)

family justice services means public or private services intended to help persons deal with issues arising from separation or divorce; (*services de justice familiale*)

family member includes a member of the household of a child of the marriage or of a spouse or former spouse as well as a dating partner of a spouse or former spouse who participates in the activities of the household; (*membre de la famille*)

family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes

a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes

- (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
- (b) sexual abuse;
- (c) threats to kill or cause bodily harm to any person;
- (d) harassment, including stalking;
- (e) the failure to provide the necessities of life;
- (f) psychological abuse;
- (g) financial abuse;
- (h) threats to kill or harm an animal or damage property; and
- (i) the killing or harming of an animal or the damaging of property; (*violence familiale*)

Federal Child Support Guidelines means the guidelines made under [section 26.1](#); (*lignes directrices fédérales sur les pensions alimentaires pour enfants*)

legal adviser means any person who is qualified, in accordance with the law of a province, to represent or provide legal advice to another person in any proceeding under this Act; (*conseiller juridique*)

order assignee means a minister, member, agency or public body to whom a support order is assigned under [subsection 20.1\(1\)](#); (*cessionnaire de la créance alimentaire*)

parenting order means an order made under [subsection 16.1\(1\)](#); (*ordonnance parentale*)

parenting time means the time that a child of the marriage spends in the care of a person referred to in [subsection 16.1\(1\)](#), whether or not the child is physically with that person during that entire time; (*temps parental*)

provincial child support service means any service, agency or body designated in an agreement with a province under [subsection 25.01\(1\)](#) or [25.1\(1\)](#); (*service provincial des aliments pour enfants*)

relocation means a change in the place of residence of a child of the marriage or a person who has parenting time or decision-making responsibility — or who has a pending application for a parenting order — that is likely to have a significant impact on the child's relationship with

- (a) a person who has parenting time, decision-making responsibility or an application for a parenting order in respect of that child pending; or
- (b) a person who has contact with the child under a contact order; (*déménagement important*)

spousal support order means an order made under [subsection 15.2\(1\)](#); (*ordonnance alimentaire au profit d'un époux*)

spouse includes, in [subsection 6\(1\)](#) and [sections 15.1 to 16.96, 21.1, 25.01 and 25.1](#), a former spouse; (*époux*)

support order means a child support order or a spousal support order; (*ordonnance alimentaire*)

variation order means an order made under [subsection 17\(1\)](#); (*ordonnance modificative*)

variation proceeding means a proceeding in a court in which either or both former spouses seek a variation order. (*action en modification*)

[Children's Law Reform Act, R.S.O. 1990, c. C.12](#)

18 (1) In this Part,

“contact” means the time a child spends in the care of a person other than the child’s parent, whether or not the child is physically with the person during that time; (“contact”)

“contact order” means an order made under section 28 respecting contact with respect to a child; (“ordonnance de contact”)

“court” means the Ontario Court of Justice, the Family Court or the Superior Court of Justice; (“tribunal”)

“decision-making responsibility” means responsibility for making significant decisions about a child’s well-being, including with respect to,

- (a) health,
- (b) education,
- (c) culture, language, religion and spirituality, and
- (d) significant extra-curricular activities; (“responsabilité décisionnelle”)

“extra-provincial order” means an order of an extra-provincial tribunal, and includes part of an order; (“ordonnance extraprovinciale”)

“extra-provincial tribunal” means a court or tribunal outside Ontario that has jurisdiction to make orders respecting decision-making responsibility, parenting time or contact with respect to a child; (“tribunal extraprovincial”)

“family member” includes a member of a household of a child or of a parent, as well as a dating partner of a parent who participates in the activities of the household; (“membre de la famille”)

“family violence” means any conduct by a family member towards another family member that is violent or threatening, that constitutes a pattern of coercive and controlling behaviour, or that causes the other family member to fear for their own safety or for that of another person, and, in the case of a child, includes direct or indirect exposure to such conduct; (“violence familiale”)

“parenting order” means an order made under section 28 respecting decision-making responsibility or parenting time with respect to a child; (“ordonnance parentale”)

“parenting time” means the time a child spends in the care of a parent of the child, whether or not the child is physically with the parent during that time; (“temps parental”)

“relocation” means a change in residence of a child, or of a person who has decision-making responsibility or parenting time with respect to the child or is an applicant for a parenting order in respect of the child, that is likely to have a significant impact on the child’s relationship with,

(a) another person who has decision-making responsibility or parenting time with respect to the child or is an applicant for a parenting order in respect of the child, or

(b) a person who has contact with respect to the child under a contact order; (“déménagement”)

“separation agreement” means an agreement that is a valid separation agreement under Part IV of the *Family Law Act*. (“accord de séparation”) 2020, c. 25, Sched. 1, s. 2.



[Bill C-41, An Act to Amend the Criminal Code \(Sentencing\) and Other Acts in Consequence Thereof, S.C. 1995, c. 22](#)

[Canadian Victims Bill of Rights \(S.C. 2015, c. 13, s. 2\)](#)

[Residential Tenancies Act, 2006, S.O. 2006, c. 17](#)

[Limitations Act, 2002, S.O. 2002, c. 24, Sched. B](#)

[Children's Law Reform Act, R.S.O. 1990, c. C.12](#)

[Saskatchewan Victims of Interpersonal Violence Act, V-6.02](#)

[Prince Edward Island *Victims of Family Violence Act*, RSPEI 1988, c V-3.2](#)

[New Brunswick *Intimate Partner Violence Intervention Act*, SNB 2017, c 5](#)

[United Kingdom, *Serious Crime Act*, 2015 c.9, s. 76](#)

76 Controlling or coercive behaviour in an intimate or family relationship

- (1) A person (A) commits an offence if—
 - (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
 - (b) at the time of the behaviour, A and B are personally connected,
 - (c) the behaviour has a serious effect on B, and
 - (d) A knows or ought to know that the behaviour will have a serious effect on B.
- (2) A and B are “personally connected” if—
 - (a) A is in an intimate personal relationship with B, or
 - (b) A and B live together and—
 - (i) they are members of the same family, or
 - (ii) they have previously been in an intimate personal relationship with each other.
- (3) But A does not commit an offence under this section if at the time of the behaviour in question—
 - (a) A has responsibility for B, for the purposes of Part 1 of the Children and Young Persons Act 1933 (see section 17 of that Act), and
 - (b) B is under 16.
- (4) A’s behaviour has a “serious effect” on B if—

- (a) it causes B to fear, on at least two occasions, that violence will be used against B, or
 - (b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities.
- (5) For the purposes of subsection (1)(d) A “ought to know” that which a reasonable person in possession of the same information would know.
- (6) For the purposes of subsection (2)(b)(i) A and B are members of the same family if—
- (a) they are, or have been, married to each other;
 - (b) they are, or have been, civil partners of each other;
 - (c) they are relatives;
 - (d) they have agreed to marry one another (whether or not the agreement has been terminated);
 - (e) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
 - (f) they are both parents of the same child;(g)they have, or have had, parental responsibility for the same child.
- (7) In subsection (6)—
- “civil partnership agreement” has the meaning given by section 73 of the Civil Partnership Act 2004;
- “child” means a person under the age of 18 years;
- “parental responsibility” has the same meaning as in the Children Act 1989;
- “relative” has the meaning given by section 63(1) of the Family Law Act 1996.
- (8) In proceedings for an offence under this section it is a defence for A to show that—
- (a) in engaging in the behaviour in question, A believed that he or she was acting in B's best interests, and
 - (b) the behaviour was in all the circumstances reasonable.
- (9) A is to be taken to have shown the facts mentioned in subsection (8) if—
- (a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and

- (b) the contrary is not proved beyond reasonable doubt.
- (10) The defence in subsection (8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.
- (11) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

[Ireland, *Domestic Violence Act 2018*, No. 6 of 2018, s. 39](#)

Offence of coercive control

39. (1) A person commits an offence where he or she knowingly and persistently engages in behaviour that—
- (a) is controlling or coercive,
 - (b) has a serious effect on a relevant person, and
 - (c) a reasonable person would consider likely to have a serious effect on a relevant person.
- (2) For the purposes of subsection (1), a person’s behaviour has a serious effect on a relevant person if the behaviour causes the relevant person—
- (a) to fear that violence will be used against him or her, or
 - (b) serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities.
- (3) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, and

- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

(4) In this section, a person is a “relevant person” in respect of another person if he or she—

- (a) is the spouse or civil partner of that other person, or
- (b) is not the spouse or civil partner of that other person and is not related to that other person within a prohibited degree of relationship but is or was in an intimate relationship with that other person.

Australia, *Family Law Legislation Amendment (Family Violence and Other Measures) Act*, No. 189, 2011

[*Gender Violence Act*, § 740 ILCS 82/1 et seq. \(Illinois\)](#)

[*Victims of Gender-Motivated Violence Protection Act*, N.Y.C. Code § 8-901, et seq. \(New York\)](#);

[*Nev. Rev. Stat. § 41.134 \(Nevada\)*](#)

NRS 41.134 Action for damages for injuries resulting from acts of domestic violence; award of costs and attorney’s fees to injured person. A person who has suffered injury as the proximate result of an act that constitutes domestic violence pursuant to NRS 33.018 may bring an action to recover for the person’s actual damages, including, without limitation, damage to any real or personal property. If the person who suffered injury prevails in such an action, the court shall award the person costs and reasonable attorney’s fees.

[*Cal. Civ. Code §§ 52.4, 1708.6 \(California\)*](#)

Section 1708.6 - Domestic violence

- (a) A person is liable for the tort of domestic violence if the plaintiff proves both of the following elements:

- (1) The infliction of injury upon the plaintiff resulting from abuse, as defined in subdivision (a) of Section 13700 of the Penal Code.
- (2) The abuse was committed by the defendant, a person having a relationship with the plaintiff as defined in subdivision (b) of Section 13700 of the Penal Code.

(b) A person who commits an act of domestic violence upon another is liable to that person for damages, including, but not limited to, general damages, special damages, and punitive damages pursuant to Section 3294.

(c) The court, in an action pursuant to this section, may grant to a prevailing plaintiff equitable relief, an injunction, costs, and any other relief that the court deems proper, including reasonable attorney's fees.

(d) The rights and remedies provided in this section are in addition to any other rights and remedies provided by law.

(e) The time for commencement of an action under this section is governed by Section 340.15 of the Code of Civil Procedure.

Ca. Civ. Code § 1708.6

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at BRAMPTON

FACTUM OF THE INTERVENORS

GILLIAN HNATIW & CO.

120 Adelaide Street West, Suite 2105,
Toronto, Ontario M5H 1T1

Anna Matas (55305R)

Samantha Eisen (75449E)

anna@gillianandco.ca
samantha@gillianandco.ca
Tel: 416.825.5659
Fax: 416.352.1526

Archana Arun Medhekar (50179Q)

910-405 The West Mall
Toronto, Ontario M9C 5J1
amlaw@amlaw.ca
Tel: 416.977.4204
Fax: 416.977.6352

WOOD GOLD LLP

21 Queen Street East, Suite 300,
Brampton, Ontario L6W 3P1

Frances Wood (41088F)

frankie@woodgold.ca
Tel: 905.451.4646
Fax: 905.451.4650

GOLDBLATT PARTNERS LLP

20 Dundas St West, Suite 1039,
Toronto, Ontario M5G 2C2

Kirsten Mercer (54077J)

kmercerc@goldblattpartners.com
Tel: 416.977.6070
Fax: 416.591.7333

Lawyers for the Intervenors.
Barbra Schlifer Commemorative
Clinic and Luke's Place