SUPREME COURT OF CANADA

CITATION: Ahluwalia *v.* Ahluwalia, 2026 SCC 16

APPEAL HEARD: February 11 and 12, 2025
JUDGMENT RENDERED: May 15, 2026
DOCKET: 41061

BETWEEN:

Kuldeep Kaur Ahluwalia
Appellant

and

Amrit Pal Singh Ahluwalia
Respondent

- and -

Attorney General of Canada,
Attorney General of British Columbia,
Raoul Wallenberg Centre for Human Rights,
South Asian Legal Clinic of Ontario,
South Asian Legal Clinic of British Columbia,
South Asian Bar Association,
DisAbled Women's Network of Canada,
Provincial Association of Transition Houses and Services of Saskatchewan,
Women's Legal Education and Action Fund Inc.,
Barbra Schlifer Commemorative Clinic,
Registered Nurses' Association of Ontario,
Justice for Children and Youth,
Luke's Place Support and Resource Centre for Women and Children,
Action ontarienne contre la violence faite aux femmes,
Sandgate Women's Shelter of York Region,
National Association of Women and the Law,
West Coast Legal Education and Action Fund Association,
Rise Women's Legal Centre,
Battered Women's Support Services Association and

Tort Law and Social Equality Project
Interveners

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

REASONS FOR JUDGMENT: (paras. 1 to 249)	Kasirer J. (Wagner C.J. and Martin, O'Bonsawin and Moreau JJ. concurring)
CONCURRING REASONS: (paras. 250 to 289)	Karakatsanis J.
DISSENTING REASONS: (paras. 290 to 400)	Jamal J. (Côté and Rowe JJ. concurring)

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2026 SCC 16

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Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Torts — Intimate partner violence — Recognition of new tort — Parties' marriage characterized by husband's abuse and pattern of coercion and control — Wife seeking tort damages for abuse as part of family law proceedings — Trial judge recognizing new tort of family violence and awarding wife damages — Whether existing torts of battery, assault and intentional infliction of emotional distress capture harm associated with coercive control — Whether existing torts providing adequate remedies in context of intimate partner violence — Whether new tort should be recognized.

The husband abused the wife over their entire 16-year marriage. The abusive conduct was sustained and varied in character. It included physical assaults, humiliation, intimidation, and conduct intending to inflict emotional distress; it extended to isolation of the wife from family members, mistreatment as a means of pressure for sex, and financial control. The husband's conduct had coerced and controlled the wife in order to break her will and condition her to obey him from the beginning of their marriage.

The husband initiated divorce proceedings. The wife agreed to the divorce and sought sole decision-making authority for the children, child support, spousal support, property equalization, and sale of the matrimonial home. The wife also requested an order for damages for the abuse she suffered at the hands of the husband.

In addition to the family law remedies, the wife was awarded $50,000 in compensatory damages, $50,000 in aggravated damages and $50,000 in punitive damages for what the trial judge characterized as the novel tort of family violence. The trial judge would have awarded, in the alternative, the same amount for the included torts of assault and intentional infliction of emotional distress. Before the Court of Appeal, the husband conceded that his abusive conduct gave rise to liability under existing torts. He nevertheless successfully obtained a reduction of the damages awarded at trial by $50,000, the amount the trial judge had awarded as punitive damages. While the Court of Appeal recognized family violence as a pervasive social problem, it made a declaration that no new tort of domestic violence or coercive control should be recognized. In its view, the trial judge erred in deciding that existing torts were not flexible enough to encompass the pattern of abuse at issue and that a new tort of family violence was required.

Held (Côté, Rowe and Jamal JJ. dissenting): The appeal should be allowed in part.

Per Wagner C.J. and **Kasirer**, Martin, O'Bonsawin and Moreau JJ.: A new tort of intimate partner violence should be recognized. Intimate partner violence is a pernicious social ill deserving of the full attention of the law. Best understood, it is not confined to conduct that inflicts physical or psychological injury, but includes all abusive conduct by which one intimate partner coerces and controls the other, thus depriving them of their autonomy. This includes egregious acts of physical and psychological violence, as well as tactics of isolation, manipulation, humiliation, surveillance, economic abuse, sexual coercion, and intimidation that can control and

entrap intimate partners. In the instant case, it is recognized that the husband's liability rests on the new tort of intimate partner violence.

Common law jurisprudence in Canada reveals a largely settled method for how and when novel causes of action in tort should be recognized. Incremental change in the common law is warranted where necessary to clarify a legal principle, resolve an inconsistency, or ensure the law remains in step with the evolution of society. Where capturing the defendant's conduct would require a redrawing of an existing tort's boundaries, incrementalism may instead favour recognizing a new cause of action to fill the gap in the law. Three principles ground the framework for determining when the courts should recognize a novel tort. First, the facts must show a wrongful act that offends a recognized legal interest in private law. Second, existing torts and their associated remedies must be inadequate. To be adequate, the existing tort or remedy must be capable of capturing the nature and scope of the wrong. It may be that the wrong fixes on a different legal interest and different form of injury that cries out for a remedy, even if some misconduct overlaps with existing torts. Should the first two elements show the need for a new tort, the analysis proceeds to the third and final step, where a novel tort is tailored to address the wrong in a manner consistent with the purposes of tort law, and the parameters of the proper role of the judiciary. A new tort must be carefully crafted to only fill the gap in the existing law, as extending it beyond that gap would risk exceeding the proper role of courts in the incremental development of tort law.

Intimate partner violence is the subject of consistent condemnation. It not only causes physical or emotional harm, depending on the nature of the act, but also

constitutes a fundamental breach of the trust intrinsic to the relationship, rendering it qualitatively different from violence between strangers. An intimate partnership is a relationship of close personal connection, sustained over a period of time, and marked by mutual interdependence, care or commitment, and the presence of domestic, emotional, financial or physical intimacy. Distinguishable from other personal or familial bonds, intimate partnerships create in each partner mutual obligations to share a common life marked by intimacy, interdependence, and respect. It is the intimacy and the durable partnership based on mutual dependency that create the setting in which sustained coercion and control can be tortious.

Intimate partner violence is centered around coercive control. While coercive control can result from discrete incidents of physical, sexual, or emotional abuse, it often also includes methods of control that are less visible, such as economic control of the victim or monitoring day-to-day movements. Abusers may impede their partner's ability to acquire, use or retain financial resources in order to undermine their security and long-term independence. Violence between intimate partners must be distinguished from mere grievances or the hurtful and sometimes vengeful behaviour that can be part of high-conflict disputes. Dishonesty, infidelity, emotional neglect, and disagreements may cause intimacy to break down but do not necessarily reflect controlling or coercive conduct. Furthermore, 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. Because the conduct is gender-based, it reveals not just the violation of gender-neutral norms

protecting physical and psychological integrity, but conduct that causes distinct harm because it violates aspects of the right to dignity, autonomy, and equality to which women are entitled in their intimate partnerships.

By undermining a victim's autonomy, intimate partner violence erodes the equality of the relationship, which in turn results in the denial of the victim's dignity and inherent worth as a person who is entitled to equal respect within the relationship. Autonomy protects the ability to make fundamental choices in accordance with one's values, free from unjustified interference from others. Intimate partner violence thus operates by undermining the victim's ability to make meaningful choices about their life. It is a mode of unequal treatment that denies an intimate partner of their agency, voice, and status. 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. A pattern of this kind constitutes an entirely different wrong from what is captured by existing torts: a deprivation of autonomy, an unequal partnership, and an overall loss of dignity that persist well after each episode of abuse and which can permeate the victim's life even post-separation. Victims seek to be restored not to the state they were in before each incident of abuse, but to the fuller state of safety, freedom, and equality that existed before the pattern began. Failure to recognize this broader harm undermines the compensatory function of tort law. Recognizing the harms to dignity, autonomy, and equality caused by coercive control as compensable accords with corrective justice, the central animating principle underlying tort law. Where an intimate partner has been deprived of their ability to live free of coercion, as an equal to their spouse, the victim has not just suffered a loss deserving of compensation, but they have been the victim of a civil wrong in that their

right to be treated with dignity, and as an autonomous equal in the relationship, has been violated.

The existing torts fail to remedy the specific wrong to dignity, autonomy and equality that intimate partner violence creates. While certain existing torts may capture discrete incidents, or even patterns, of interference with one's physical, psychological, or emotional integrity, they do not account for the wider and qualitatively different consequences of coercive control in intimate partnerships brought about by single acts of violence or by patterns of conduct over time. Individual incidents of physical abuse cause harm, as they would to anyone, but within an intimate partnership they also serve to subordinate the partner. Existing torts do not recognize the equality norm that is transgressed when coercive conduct is the core misconduct in an intimate partnership, and where subordination is the core injury. It is not just that the physical and psychological injury is aggravated by the intimate partnership setting; the injury is qualitatively different because of the intimate partnership setting. Although existing torts capture conduct that may, in part, overlap with intimate partner violence, plaintiffs must adduce evidence of the abuse they experienced to fit into existing legal categories, only to obtain an incomplete remedy. This approach inevitably leaves aspects of the wrong and the injury unaddressed. Aggravated damages provide no answer to coercive control as a distinct wrong. The breach of trust associated with intimate partner violence is not merely an aggravation of physical or psychological harm. Tort law in its current form can provide some redress for victims of intimate partner violence where the material facts pleaded satisfy the varying requirements of existing torts; it nonetheless imposes considerable barriers, particularly for victims who experience coercive control through conduct that is not fully captured by existing torts.

Forcing facts into the strict confines of existing torts does not advance access to justice for victims of intimate partner violence.

The existing torts of battery and assault are often episodic in nature and cannot capture the interference to the victim's autonomy. The tort of battery is restricted to the protection of one's physical autonomy, not as an interest pertaining more generally to one's agency and freedom to make one's own decisions within an intimate partnership. Assault is an intentional act that causes one to reasonably apprehend imminent harmful physical contact, which interferes with one's psychological integrity and security. Imminence is a critical component of the tort of assault that, by definition, constrains it to discrete incidents causing emotional harm. The tort of assault cannot capture the many forms that intimate partner violence can take — such as manipulation, isolation, or financial abuse — which do not necessarily arouse a fear of imminent contact, and whose cumulative coercive effects over its victim only appear over time. Coercive control creates a generalized fear of future harm, which is different from imminent harm. The physical and psychological injury resulting from incidents of battery and assault remain distinct from the victim's subordination in the relationship to which they contributed. While damages may be awarded to compensate for emotional harm arising from battery and assault, the harm is a result of specific incidents, rather than the generalized fear that characterizes the state of subordination. The existing torts of assault and battery are inadequate to compensate a victim for the distinct wrongs associated with coercive control resulting in the loss of dignity, autonomy, and equality as an intimate partner.

The existing tort of intentional infliction of emotional distress is constrained to emotional harm and does not encompass the deprivation of autonomy. Intentional infliction of emotional distress is where there is flagrant or outrageous conduct that is calculated to produce harm and which results in a visible and provable illness. Abuse indicative of coercive control in intimate partnerships is often recurrent and involves low-level actions rather than flagrant or outrageous conduct. Furthermore, given the focus on psychological integrity, the tort remedies harms that are emotional and psychological in nature. To make out liability under the tort of intentional infliction of emotional distress, a victim of intimate partner violence must prove they suffer from a visible and provable illness that is serious and prolonged and rises above the ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept. Absent proof of visible symptoms of emotional distress, a plaintiff will find themselves without remedy. This tort is ill-suited for methods of coercion that do not produce a visible and provable psychological illness. The common law of torts would be deficient if it required that the abusive deprivation of an intimate partner's autonomy first coincide with physical or emotional harm before it becomes tortious and thus compensable. Extending the tort of intentional infliction of emotional distress beyond emotional harm in order to accommodate interference with dignity, autonomy, and equality would require a fundamental realignment of its elements, breaking sharply with the caselaw and generating uncertainty.

It is therefore appropriate to recognize a new tort of intimate partner violence. The new tort is tied to the intimate partnership and is distinct from existing torts in that it seeks to compensate the qualitatively different wrong of coercive control, and the qualitatively different harm of loss of autonomy. It is not simply an aggregate,

under a broad umbrella, of wrongful conduct already remedied by various existing torts. Under the new tort of intimate partner violence recognized in the reasons in the instant case, a plaintiff must establish three elements. First, the abusive conduct arose in an intimate partnership or its aftermath. Second, the defendant intentionally engaged in that conduct. The plaintiff need only show that the defendant intended to engage in the impugned conduct, not that they subjectively intended to control their intimate partner. For guidance, the following are some types of conduct that are capable of constituting coercive control: physical and sexual violence; emotional and psychological abuse, including verbal abuse; harassment, humiliation, and denigration; financial control, stalking, and surveillance; behaviour that isolates a partner from others, or that denies a partner access to educational, employment, and recreational opportunities; litigation abuse; and threatening conduct, including threatening to harm the children or take them away, and threatening to commit suicide. Third, the conduct, on an objective measure, constitutes coercive control. The trial judge must determine whether a reasonable person, fully apprised of the relevant context of the relationship, would have perceived the defendant's acts, considered cumulatively, as amounting to an assertion of control over the plaintiff that has the effect of depriving them of their dignity, autonomy, and equality in the relationship. Where circumstances show that the reasonable person would conclude that the abusive conduct is incompatible with the intimate partnership, the burden will be readily met. The harm associated with coercion flows from proof of the wrongful conduct. Accordingly, this new tort does not require the plaintiff to prove any consequential harm separately.

Whether manifested through a single violent act, discrete acts of violence, or a pattern of abuse, the new tort fixes on coercive or controlling conduct by which

one partner overpowers the will of the other. The new tort of intimate partner violence fills a gap in the common law by properly recognizing that conduct objectively resulting in domination and control of an intimate partner is a qualitatively distinct wrong from those wrongs redressable through existing torts. It is the intimate partnership context that enables the abuser to exert control over their victim. Liability arises because coercive control constitutes an interference with an intimate partner's autonomy; it is inherently incompatible with an intimate partnership as it renders the partnership unequal and results in dignitary harm, alongside, but distinct from, the physical or psychological harm that can be caused by abuse. The focus on coercive control further underscores that this form of abuse is tortious not merely because it arises in intimacy, but because it is a distinct wrong giving rise to a distinct harm. The new tort is designed to recognize the gap in the law and to equip judges with resources in the private law toolbox to respond to the distinctive wrong of intimate partner violence and the distinctive injury to victim's autonomy that goes beyond the physical and psychological losses it brings in the intimate partner setting. Where the plaintiffs plead material facts that disclose coercive control, judges, with the benefit of this new tort, will be in a position to grant remedies that address the full scope of the harm suffered, rather than confining such claims to a patchwork of existing torts, that, even with aggravated damages, provide only incomplete redress.

Courts must take care not to mischaracterize a victim's resistance to a partner's attempt at domination, or all misconduct in a high conflict breakdown, as coercive control under the new tort. An overinclusive new tort that captures acts of resistance risks exposing victims of intimate partner violence to retaliatory claims by perpetrators and may inhibit victims of coercive control from coming forward, thereby

raising barriers of access to justice. Mere dysfunction of an intimate partnership, or a relationship marked by an imbalance between the parties in the absence of coercive control, is not intimate partner violence in the same sense.

In the instant case, the wife has proven that she experienced an array of abusive coercive tactics at the hands of the husband, whose actions interfered with her autonomy, rendered her an unequal partner, and undermined her dignity. The material facts that she pleaded, properly understood, reveal coercive control as the wrongful conduct. Existing torts may respond to the wife's injuries insofar as they flow from interference with her bodily and psychological integrity, but they are incapable of addressing the interference with her autonomy that arises from the cumulative effect of the physical and non-physical modes of coercion to which she has been subjected over the course of the marriage. Existing torts, even when taken together, are not wide enough to capture the full nature and scope of the wrongful conduct of intimate partner violence because coercive control is not merely an aggravated form of committing an extant wrong.

The wife has made out all three elements of the new tort of intimate partner violence. The husband's domination and grip over the wife remained a defining characteristic of their relationship. The wife's free will in the relationship was overwhelmed by the husband's coercion which allowed him to dominate the intimate partnership. She was the victim of a protracted pattern of abusive behaviour that served not just to hurt her psychologically or physically, but to bring her to heel. The husband's coercive conduct included three apparently discrete acts of extreme physical violence. But it also encompassed, as part of the same tort of intimate partner violence, a wide

array of more subtle forms of manipulation, not all of which are addressed by existing torts. Separate claims under existing torts were therefore not necessary because all of the husband's harmful conduct was undertaken to the same coercive effect, to deprive the wife of an autonomous and equal voice in decision making in the marriage. Furthermore, he wrongly limited her freedom to live her own life within the intimate partnership — to make choices in relation to her career, her relationship with her family and friends, and the pursuit of her own happiness. Cumulatively, the husband's conduct subordinated the wife to his will in a manner that undermined her rights to dignity and autonomy as a person and to equality in the relationship.

The matter is properly before the Court. The wife was entitled to challenge the order of the Court of Appeal that a new tort was not recognized. Furthermore, the parties' agreement not to appeal the quantum of damages provides no answer to the distinct question of the proper basis in tort for awarding those damages. The quantum of damages and the basis of liability, though related, are analytically distinct issues.

The trial judge's decision to award identical amounts of damages for the new tort of family violence that she recognized and for the included existing torts reflects an error of law. The new tort included conduct covered by the existing torts but expanded the compass of misconduct to coercive and controlling behaviour not covered by battery, assault or intentional infliction of emotional distress. If an amount of damages provides full compensation for the harm suffered for the new tort, then the same amount for the existing torts is overcompensation. The distribution of compensatory and aggravated damages awarded by the trial judge should be modified to state that the entire damages award is included under the head of general

compensatory damages. The conduct the trial judge considered warranting aggravated damages falls within the scope of the tort of intimate partner violence. The harm experienced by the wife from coercive control, including that associated with her dignity, autonomy, and equality should fall fully under general compensatory damages for the tortious conduct of intimate partner violence.

Per **Karakatsanis** J.: There is agreement with the majority that a new tort of intimate partner violence should be recognized. There is also agreement with the majority on the first two elements of the proposed tort. However, under the third element of the proposed tort, recovery should not be limited to coercive control. Instead, the third element of the tort of intimate partner violence can be met by establishing either coercive control or any act or threat of violence in an intimate partner relationship that causes physical or psychological harm. Limiting the tort to coercive control does not reflect the full lived realities of vulnerable survivors of intimate partner violence.

Where existing torts do not provide an adequate basis to address wrongdoing and correct proven harm, courts should recognize a new tort to ensure full recovery. After a court has identified a gap in the common law requiring the creation of a new tort, corrective justice supports a broad approach to determining its scope. While violence between strangers may be captured by existing torts such as battery and assault, the nature of both the wrongdoing and the harm are qualitatively distinct in an intimate partnership. There is a clear gap in how tort law responds to the unique harms in intimate partner relationships. When people enter intimate partnerships, they agree to share their private lives. Violence from an intimate partner is fundamentally different

from violence from a stranger because it becomes a breach of trust and a violation of a personal relationship that undermines family, financial or personal living arrangements. Violence and threats of violence between intimate partners that would be caught under the existing torts of battery and assault should be captured under a new distinct tort of intimate partner violence, even without proof of coercive control. The full extent of the gap in the law should not be ignored solely because existing torts such as battery and assault could provide recovery, leaving the unique nature of the wrongdoing and harm to be reflected in aggravated damages.

Access to justice requires a broader tort of intimate partner violence. This tort should be broad enough to capture the unique wrongfulness and elevated harm that flows from violence in intimate partner relationships. While coercive control is a form of intimate partner violence, that category does not capture its full extent. Not all intimate partner relationships are organized around sustained domination, and the law must remain attentive to the many forms that intimate partner violence can take. Single or episodic acts of physical violence, threats, or sexual violence may occur independently of coercive control. These acts can be profoundly injurious on their own terms, even in relationships that do not show the hallmarks of coercive control. Accordingly, while coercive control is a helpful concept for identifying and understanding many forms of intimate partner abuse, it is not the sole or definitive marker of intimate partner violence. To the extent that coercive control captures wrongful conduct that is not currently caught by existing torts, it brings value to the development of this new tort of intimate partner violence. But confining the new tort exclusively to coercive control excludes well-recognized forms of violence that can

occur in a relationship that should not require added evidentiary requirements of demonstrating that they are aimed at controlling or restricting the victims.

A one-stop shop tort best achieves access to justice for victims of intimate partner violence. The new tort should allow simple recovery for discrete instances of intimate partner violence. Whether an individual is subjected to coercive control, or other forms of violence causing them physical or psychological harm, it is the context of the intimate partnership which justifies distinct judicial recognition and markedly higher damages than those available under the existing torts available between strangers. Including acts of violence that caused physical or psychological harm in the scope of the new tort allows victims of intimate partner violence to plead and argue all instances of that violence under one tort.

Per Côté, Rowe and **Jamal** JJ. (dissenting): The appeal should be dismissed. The epidemic of intimate partner violence in Canada demands a response from the justice system that is both compassionate and principled. As part of that response, intimate partner violence is actionable in tort at common law. The wife in this case claimed $100,000 in damages for the violence she suffered, and she received $100,000 under existing torts, sensitively applied to her circumstances. There is no basis to interfere with that result. This is not, therefore, a proper case in which to recognize a new tort. Courts should decline to create a new tort when existing torts already fully compensate the plaintiff. Even if it were appropriate to consider creating a new tort, the new torts proposed by the majority and Karakatsanis J. will create significant complications for plaintiffs seeking compensation for intimate partner violence. This militates against their recognition. Nothing prevents courts from

considering the wisdom of creating a new tort in a future case when it actually bears on the outcome.

Courts should recognize a new tort only when it is necessary to provide a remedy on the facts before them. Because the common law develops incrementally through concrete disputes, courts decline to create new torts when existing causes of action can provide full compensation. The need for judicial restraint is especially pronounced when a court is asked to recognize a wholly new tort. Recognizing a new tort can entail a radical shift in the law that is better left to a legislature. Accordingly, examples where new torts have been recognized are rare. Cases recognizing new torts have involved situations where the courts were responding to facts that cry out for a remedy that they could not otherwise provide.

In the instant case, there is no need for the Court to consider creating a new tort. The trial judge concluded that the wife was owed full compensation under the existing torts and there is no basis to interfere with that conclusion. The manner in which this case proceeded at trial provides important context for understanding why it is an inappropriate vehicle for creating a new tort. Neither party asked the trial judge to create a new tort of family violence. The wife relied exclusively on case law applying existing torts to support her claim for damages. After the evidence had closed and the court had reserved its decision, the trial judge asked the parties to provide written submissions on various issues, including whether the court should create a new tort of family violence in Canadian law. The trial judge created a new tort of family violence that was not based on the parties' submissions and, in the alternative, found the husband liable under the existing torts. Before the Court of Appeal, the husband conceded

liability under the existing torts of assault, battery, and intentional infliction of emotional distress, but urged the court to overturn the trial judge's new tort of family violence. He argued that there was no proper basis in law to recognize such a new tort and objected to how the trial judge had proceeded.

The existing torts were fully capable of addressing the factual matrix in this case and provided ample basis for the trial judge's award of damages. The common law governing intimate partner violence reflects a gradual and ongoing process of shedding gender stereotypes and sexist premises from tort law. Through both legislative reform and principled judicial decision-making, the law now provides protection for bodily integrity, psychological security, and personal autonomy, while flexible approaches to damages ensure that victims of intimate partner violence are fully compensated, as was done here. These developments should be recognized and affirmed. A growing body of family law jurisprudence shows courts now joining tort claims to family law proceedings and applying established torts to address the pernicious harms of intimate partner violence. The torts of assault, battery, and intentional infliction of emotional distress are regularly applied in the context of intimate partner violence and include awards of aggravated damages, which vindicate the loss of dignity or autonomy and provide compensation for pain and suffering.

The Court of Appeal's decision in the instant case has brought renewed attention to tort claims in the intimate partner context. Courts have routinely relied on existing torts to address the varied and severe harms arising from intimate partner violence and have granted significant awards of damages. Recently decided cases show that compensation amounts for such torts are increasing to accurately reflect the serious

harms suffered by victims of intimate partner violence. Other recent cases confirm that existing torts like intentional infliction of emotional distress can be applied flexibly in the intimate partner context to capture abusive patterns of behaviour for incidents that, in isolation, may not rise to the level of tortious conduct. None of these cases relied on the creation of a new tort, yet each still provided meaningful remedies for victims. Decisions that seek to justify lower damages awards for intimate partner violence are entirely out of step with the dominant strand of the jurisprudence and should not be followed.

The trial judge's award of compensatory and aggravated damages under existing torts should not be disturbed. Although the trial judge first relied on her newly created tort of family violence, she also expressly found that the established torts grounded exactly the same quantum of damages. She awarded compensatory damages for ongoing mental health disabilities and lost earning potential, with additional aggravated damages given the pattern of coercion and control and the clear breach of trust. The trial judge found a 16-year pattern of emotional, mental and psychological abuse and concluded that the husband preyed on the wife's vulnerability as a racialized, newcomer woman. The majority would set aside the trial judge's award of damages under existing torts and conclude that the existing torts do not cover the additional injury flowing from the wife's coercive control. The majority says that the award under existing torts should logically have been less, even though both parties expressly stated that the damages are not before the Court, this new issue has not been presented to the parties for submissions, and there is an insufficient basis in the record to resolve it. Setting aside the damages award under existing torts would inappropriately interfere with the trial judge's recognized discretion to quantify damages, a question of mixed

fact and law to which appellate deference is owed. There is no basis to interfere with the trial judge's award on this deferential standard.

Even if it were appropriate to recognize a new tort in the instant case, the complex and unprecedented formulations of the proposed new torts by the majority and Karakatsanis J. risk complicating the path to recovery for victims of intimate partner violence and inhibiting access to justice. The formulations of the new torts are not based on comparative law, judicial *obiter dicta*, or private law commentary. New torts in this form are unprecedented in the common law world. Although torts specifically addressing aspects of family violence exist in some other jurisdictions, they bear little if any resemblance to the proposed new torts.

The unprecedented new torts of the majority and Karakatsanis J. risk creating considerable uncertainty for litigants and trial courts. Their descriptions of the elements of the new torts, which will be the only meaningful guidance for litigants given the lack of foundation in existing law, risk inconsistent and unpredictable applications. Outside familiar scenarios already compensable under the existing torts, it is not clear what precise behaviour would make out coercive control. Since the objective test is focused on a reasonable person's evaluation of the defendant's conduct, recovery is allowed even when the plaintiff was not actually coercively controlled and when the plaintiff suffered no consequential harm. The focus is no longer on the harm suffered by the plaintiff, but instead on how a reasonable person would evaluate the relationship. The complex new analytical tasks for trial judges under the proposed new torts contrast with the straightforward analysis under existing torts. Further, no practical guidance is provided to lower courts on the damages to be awarded under the new torts.

Nor is there any explanation of how damages under the new torts should compare to the existing torts, or guidance regarding how these principles apply to the claim here. Lower courts will have great difficulty quantifying damages under these new torts. These serious concerns highlight how creating a new tort in this case represents complex changes to the law with uncertain ramifications, rather than an incremental judicial modification.

Cases Cited

By Kasirer J.

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APPEAL from a judgment of the Ontario Court of Appeal (Benotto, Trotter and Zarnett JJ.A.), 2023 ONCA 476, 167 O.R. (3d) 561, 93 C.C.L.T. (4th) 1, 483 D.L.R. (4th) 706, 88 R.F.L. (8th) 1, [2023] O.J. No. 3042 (Lexis), 2023 CarswellOnt 10325 (WL), setting aside in part a decision of Mandhane J., 2022 ONSC 1303, 161 O.R. (3d) 360, 81 C.C.L.T. (4th) 74, 68 R.F.L. (8th) 255, [2022] O.J. No. 908 (Lexis), 2022 CarswellOnt 2367 (WL). Appeal allowed in part, Côté, Rowe and Jamal JJ. dissenting.

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The judgment of Wagner C.J. and Martin, Kasirer, O'Bonsawin and Moreau JJ. was delivered by

KASIRER J. —

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I. Overview

[1] In divorce proceedings initiated by Amrit Pal Singh Ahluwalia in the Ontario Superior Court of Justice, Kuldeep Kaur Ahluwalia proved that she had been the victim of abuse at the hands of her husband over the entire life of their marriage. The trial judge described the abuse as a "16-year pattern of coercion and control" (2022 ONSC 1303, 161 O.R. (3d) 360, at para. 5). She found that this was not just an unhappy or dysfunctional relationship, but a "violent" one (*ibid.*). The abusive conduct was sustained and varied in character. It included the husband's physical assaults, humiliation, intimidation, and conduct intending to inflict emotional distress; it extended to isolation of Ms. Ahluwalia from family members, mistreatment as a means of pressure for sex, and financial control. The trial judge found that Mr. Ahluwalia's conduct had coerced and controlled his wife in order to break her will and condition her to obey him from the beginning of their marriage. Behind the shield of intimacy, he imposed a conception of marriage on Ms. Ahluwalia where the husband and wife were one, and that one was Mr. Ahluwalia.

[2] In addition to remedies ordered under the applicable statutes governing marriage breakdown, including child support, spousal support and equalization of family property, Ms. Ahluwalia — who was self-represented at trial — was awarded $150,000 in damages for what the trial judge characterized as the novel tort of family violence. The trial judge would have awarded, in the alternative, the same amount to Ms. Ahluwalia for the "included" torts of assault and intentional infliction of emotional distress ("IIED") (paras. 103 and 111). Before the Court of Appeal, Mr. Ahluwalia conceded that his abusive conduct gave rise to liability under existing torts. He nevertheless successfully obtained a reduction of the damages awarded at trial and a declaration that no new tort of domestic violence or coercive control should be recognized.

[3] Mr. Ahluwalia's abuse, amounting to coercive and controlling conduct, rests on the trial judge's findings of fact which are no longer in dispute. 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 right to say that intimate partner violence represents the "cancer of domestic relationships" (2023 ONCA 476, 167 O.R. (3d) 561, at para. 43). Further, the parties both recognize that private law, specifically the common law of torts, can be invoked in family law proceedings to obtain financial redress for this kind of violence. The parties have agreed not to contest the quantum of damages fixed by the Court of Appeal.

[4] What is in issue is the basis for liability in tort. Ms. Ahluwalia says the trial judge was right to award damages based on a novel intentional tort of family violence. Mr. Ahluwalia answers that the existing torts of battery, assault, and IIED provide an

adequate basis for the damage award, and that the common law should not be extended to recognize a new tort as the basis for liability.

[5] On the strength of the facts and Ms. Ahluwalia's pleadings, I would recognize a tort of "intimate partner violence". In order to establish liability under this new tort, a plaintiff must prove three elements: first, that the abusive conduct arose in an intimate partnership or its aftermath; second, that the defendant intentionally engaged in that conduct; and third, that the conduct, on an objective measure, constitutes coercive control. Proof of these three elements suffices to establish that the plaintiff has suffered a dignitary harm (see generally *Insurance Corporation of British Columbia v. Ari*, 2025 BCCA 131, 46 C.C.L.I. (6th) 173, at para. 32). Harm flows from proof of the intentional wrong because coercive control directly interferes with the plaintiff's legal interests in dignity, autonomy, and equality within an intimate partnership. The extent of that harm may warrant a greater or lesser quantum of damages, depending on the circumstances.

[6] Ms. Ahluwalia has made out all three elements of the new tort. She was the victim of a protracted pattern of abusive behaviour that served not just to hurt her psychologically or physically, but to bring her to heel. Mr. Ahluwalia's coercive conduct included three apparently discrete acts of extreme physical violence. But it also encompassed, as part of the same tort of intimate partner violence, a wide array of more subtle forms of manipulation, not all of which are addressed by existing torts. Taken cumulatively, the whole of this misconduct justifies the principal award of damages under the new tort. Separate claims under existing torts were therefore not necessary because all of Mr. Ahluwalia's harmful conduct was undertaken to the same coercive

effect, to deprive Ms. Ahluwalia of an autonomous and equal voice in decision making in the marriage. Furthermore, he wrongly limited her freedom to live her own life within the intimate partnership — to make choices in relation to her career, her relationship with her family and friends, and the pursuit of her own happiness. Cumulatively, Mr. Ahluwalia's conduct subordinated Ms. Ahluwalia to his will in a manner that undermined her rights to dignity and autonomy as a person and to equality in the relationship. On the basis of the trial judge's findings of fact, the entire sum of $100,000 in general and compensatory damages must therefore be awarded for the tort of intimate partner violence, which includes but is not limited to those physical acts of violence and psychological abuse.

[7] The term violence often focuses the legal mind on threats to bodily and psychological integrity, but intimate partner violence is best understood as coercive and controlling conduct that undermines autonomy in other insidious ways, not just egregious acts of physical violence, but tactics of isolation, manipulation, humiliation, surveillance, economic abuse, sexual coercion, and intimidation that can control and entrap intimate partners (see J. Mosher et al., "Submission to Justice Canada on the Criminalization of Coercive Control", in Osgoode Hall Law School Legal Studies Research Paper Series, Research Paper No. 4619067 (October 30, 2023), at p. 5, cited with approval in *Dunmore v. Mehralian*, 2025 SCC 20, at para. 57, per Martin J.). In this case, the trial judge accepted that Mr. Ahluwalia's abusive conduct served to control Ms. Ahluwalia and that coercive conduct did not just cause physical and emotional harm.

[8] Corrective justice, which seeks to restore parties to the position they would have been in had the wrong not occurred, calls for the recognition of this new tort as a properly incremental response by the common law to this coercive form of intimate partner violence. Liability under this novel tort of intimate partner violence is based on intentionally abusive conduct undertaken by one intimate partner that coerces or controls the other in a manner that is inherently incompatible with their relationship. The new tort is tied to the intimate partnership and is distinct from existing torts in that it seeks to compensate a qualitatively different wrong of coercive control, and a qualitatively different harm of the loss of autonomy. It is not simply an aggregate, under a broad umbrella, of wrongful conduct already remedied by various existing torts. While some of the conduct captured by the new tort may overlap with existing torts, coercive intimate partner violence generally includes and extends beyond discrete acts of physical and psychological abuse. None of the existing torts consider whether the alleged wrongful conduct coerces or controls the victim, nor are they designed to compensate the victim for the distinct injury to their intangible interests in dignity, autonomy, and equality within an intimate relationship. These are the distinctive features that constitute the hallmark of the new tort, distinguishing it from misconduct between strangers. It is these features — not captured by existing torts — that must not go without a remedy and that justify, in keeping with the proper incremental development of the common law, the creation of a new basis for liability applicable to intimate partners. This coercive and controlling conduct is a violation of the trust and equality inherent in intimate partnerships in Canadian law.

[9] Aggravated damages awarded under existing torts simply because the harm occurs in an intimate partnership are an insufficient remedy. The victim of the tort of

intimate partner violence has not just suffered a notionally more severe harm associated with misconduct under an existing tort; the victim of the tort of intimate partner violence has suffered a distinct harm to their interests in dignity, autonomy, and equality within the relationship for which they have a right to full compensation which cannot be addressed through aggravated damages under existing torts. The quantum of damages must properly reflect the breadth and depth of the harms caused by intimate partner violence on all aspects of the victim's life. The intimate partner context does not merely constitute an aggravating factor — it is an element of the tortious conduct itself.

[10] The dispute between Ms. Ahluwalia and her violent ex-husband is emblematic of the inadequacy of private law in its present guise to account for how vulnerable persons in intimate partnerships experience harm at the hands of the very individuals in whom they have placed their trust. Part of this inadequacy reflects the law's entrenched and outmoded tendency to avoid entering the realm of intimate family relations, even when there are signs that things have gone very wrong. I commend the trial judge and the Court of Appeal for not falling into that trap. But in my view, part of this inadequacy also stems from private law's persistent failure to respond adequately to the plight of victims of intimate partner violence. The existing law of torts, developed outside of the intimate partner context, can be a barrier where the character of the tortious conduct is misunderstood. When conduct is particularly egregious — plain incidents of battery or of flagrant or outrageous conduct giving rise to proven psychological harm — damage awards are often low and could be corrected by increased damage awards for existing torts committed in the intimate partner setting. But when coercive and controlling conduct incompatible with the intimate partnership

falls short of the requirements associated with existing torts, the abuse goes uncompensated because the wrong and its resulting harm to the victim's dignity, autonomy, and equality inherent in intimate partnerships are not properly understood by the current law.

[11] Parliament has seized upon the reality that intimate partner violence can be criminal — an offence against the public good. Intimate partner violence is indeed a reality to which criminal law is increasingly attuned and responsive (see, e.g., House of Commons, Standing Committee on the Status of Women, *Coercive Control in Canada: Report of the Standing Committee on the Status of Women*, 1st Sess., 45th Parl., November 2025, at pp. 31-40; ss. 718.2(a)(ii), 718.201 and 718.3(8) of the *Criminal Code*, R.S.C. 1985, c. C-46). Yet the very people who feel the hard edge of this abuse and who seek monetary compensation for the loss associated with intimate partner violence often find themselves left behind by private law (F. Kelly, "Private Law Responses to Domestic Violence: The Intersection of Family Law and Tort" (2009), 44 *S.C.L.R.* (2d) 321, at pp. 324-25).

[12] An articulate body of scholarship has denounced the inability of tort law as it currently stands to see intimate partner violence as a distinct civil wrong, causing distinct harm, by reason of the nature of the relationship in which intimate partner violence occurs. The shortcomings of the law require more than just a change in perspective when determining damages once liability has been found. It calls for a recognition that the civil wrong associated with coercive control and the harm resulting from intimate partner violence are different from those associated with other torts. The tortfeasor in intimate partner violence does not simply hurt or threaten their partner.

The abuse can pervade the relationship and controls the life of the victim such that the intimate partnership becomes a dangerous place where the abuser decides and the victim obeys or risks facing renewed abuse. Intimate partner violence is not fully captured by assault, battery, IIED, or other existing torts because they fail to account for the intimate partner context and the distinct effect of the abuse visited upon the intimate partner: to dominate the relationship by coercing and controlling the victim, in various and sometimes subtle ways, often over a long period of time, so the relationship itself becomes one of subordination, inequality, and indignity.

[13] The new tort of intimate partner violence recognized here will often involve, as in the case of the Ahluwalias, a pattern of coercive wrongdoing of various kinds over a period of time. But I hasten to say that a single wrongful act, committed by one intimate partner on the other, is not excluded as part of this new tort of intimate partner violence, nor are discrete acts of abuse that appear disconnected over time. A single act of physical violence inflicted by one intimate partner upon the other may be sufficient for the aggressor to lay down the law for the relationship in a manner that serves to control, isolate, or entrap the victim (see L. C. Neilson, *Enhancing Safety: When Domestic Violence Cases are in Multiple Legal Systems (Criminal, family, child protection) A Family Law, Domestic Violence Perspective* (2nd ed. 2013), at p. 32). Sometimes, as in this case, discrete acts of physical, psychological, or sexual violence are best understood, when measured in the context of the relationship considered as a whole, as part of a pattern of coercive and controlling conduct, all of which deprive the victim of their dignity, autonomy, and equality within the relationship. An act of violent misconduct may, on its own, constitute coercive control; it may also form part of a wider pattern that includes what is sometimes seen as lesser forms of violent coercion

— for example, harassment, stalking, isolation of a partner from others, financial control, or pressure for unwanted sex.

[14] Whether it manifests itself as a single act or as a pattern of misconduct in an intimate partnership, the controlling effect of this brand of intimate partner violence means that the aggressor has acted in a manner incompatible with the intimate partnership. The threshold for determining whether the alleged conduct objectively constitutes coercive control will generally be readily met, since a reasonable person would regard this kind of abusive conduct as a breach of the trust between two equal partners that is incompatible with an intimate partnership. This misconduct — be it as a single act or as a pattern — undermines an intimate partner's dignity, autonomy, and equality. Nevertheless, the threshold is an important one as it serves to exclude the rare cases of wrongful conduct arising in intimate partnerships that would not control or isolate the victim.

[15] The intervener National Association of Women and the Law ("NAWL") warns against the new tort being cast too widely, in a manner that might be "weaponized" against the very survivors of intimate partner violence it seeks to protect (I.F., at para. 5). The example cited before the Court was the act of resistance committed by the survivors of intimate partner violence themselves. Numerous studies have documented that many women who experience abuse respond with violent acts of resistance to defend themselves (see J. B. Kelly and M. P. Johnson, "Differentiation among types of intimate partner violence: Research update and implications for interventions" (2008), 46 *Fam. Ct. Rev.* 476, at p. 484). That conduct — the response of an abused intimate partner — may or may not be wrongful in its own right under

existing torts. But the conduct plainly does not deserve compensation on the basis of a tort of intimate partner violence which is designed to remedy coercive control because, in that case, the survivor's conduct, on an objective measure, does not have the effect of controlling or depriving their own aggressor of their autonomy. NAWL submits that the new tort should be defined "in a way that centres [on] liberty deprivation" and requires courts to "identify the dominant aggressor" on that basis (I.F., at para. 3). An overinclusive tort not centered on coercive control could capture acts of resistance, thereby inappropriately enabling abusers to bring a claim against survivors of intimate partner violence under the new tort. Requiring survivors to defend themselves against these claims could have the perverse effect of deterring them from advancing claims against their abusers, thereby raising unintended barriers of access to justice.

[16] To be sure, any wrongful act of violence by either partner arising in an intimate partnership that causes physical or psychological harm can give rise to tort liability. Absent coercive control, other forms of violence between intimate partners are already recognized by existing torts. The existing law recognizes that these wrongs should command higher damage awards in a family setting — in some cases aggravated damages and even punitive awards — than the same act committed between strangers because it constitutes a breach of the trust that animates intimate partnerships. The Court of Appeal observed that "the higher damage award reflects an emerging understanding of the evils of intimate partner violence and its harms" (para. 128; see, e.g., *Shaw v. Shaw*, 2012 ONSC 590, 9 R.F.L. (7th) 359; *Jane Doe 72511 v. M. (N.)*, 2018 ONSC 6607, 143 O.R. (3d) 277, at paras. 117-18). As the Court of Appeal properly explained in this case, "[a] new tort is not required when the only difference from established torts is the quantum of damages" (para. 52). By contrast, coercive

control as a distinct manifestation of intimate partner violence is not acknowledged as a wrong under existing torts and cannot be addressed through aggravated damages. It is this identifiable gap that justifies the creation of a new tort at common law because even the higher damage awards called for by the Court of Appeal do not address this distinct wrong of coercion and the specific harm it causes. As it stands, the common law must evolve, incrementally, to fill this gap in order to provide redress for the coercive and controlling violence that survivors, such as Ms. Ahluwalia, have suffered, as reflected in the facts she has alleged and proven.

[17] The intimate partner is not simply seeking compensation for the physical and psychological bruises that are recognized by existing torts; in effect, they are alleging "I am not just a bruised spouse, I am an unfree spouse". The new tort is designed to recognize that gap in the law and to equip judges with resources in the private law toolbox to respond to the distinctive wrong of intimate partner coercive control and the distinctive injury to victims' autonomy that goes beyond the physical and psychological losses it brings in the intimate partner setting. This is a matter of access to justice, as the interveners the Attorney General of Canada and the Attorney General of British Columbia submit (I.F., Attorney General of Canada, at para. 2; I.F., Attorney General of British Columbia, at para. 26). Plaintiffs seeking damages arising from intimate partner violence need not navigate the patchwork of torts nor plead any specific tort, as it is not their task "to attach the appropriate legal label to the facts" (*Lawrence v. Peel Regional Police Force* (2005), 250 D.L.R. (4th) 287 (Ont. C.A.), at para. 5; S. Beswick, "The Cause of Action in *Ahluwalia v. Ahluwalia*" (2025), 55 *Advocates' Q.* 429, at p. 434). That task falls to the court. This is particularly true in family law proceedings, in which judges have an important case management role to

facilitate access to justice for self-represented litigants (*Sethi v. Sethi*, 2025 ONSC 5079, 19 R.F.L. (9th) 299, at paras. 46-49, citing *Frick v. Frick*, 2016 ONCA 799, 132 O.R. (3d) 321, at para. 11). Where plaintiffs plead material facts that disclose coercive control, judges, with the benefit of this new tort, will be in a position to grant remedies that address the full scope of the harm suffered, rather than confining such claims to a patchwork of existing torts that, even with aggravated damages, provide only incomplete redress.

[18] Moreover, and contrary to Mr. Ahluwalia's submissions, the recognition of the intentional tort of intimate partner violence is consistent with the accepted framework for the incremental development of the common law of torts. In identifying the basis for recognizing a new tort, I am guided by the analysis undertaken in a leading appellate case in Ontario, *Jones v. Tsige*, 2012 ONCA 32, 108 O.R. (3d) 241, in which Sharpe J.A. recognized a novel tort where, like here, the facts "cry out for a remedy" (para. 69). A new tort cannot be created from whole cloth but must reflect an emerging acceptance in legal sources that justifies the incremental change in the law (see *Merrifield v. Canada (Attorney General)*, 2019 ONCA 205, 145 O.R. (3d) 494, at para. 25). Like in *Jones*, the trial judge here relied on a wide range of legal sources to support the conclusion that existing torts were inadequate to answer the intimate partner violence made out by Ms. Ahluwalia. Also, like in *Jones*, the trial judge observed an emerging consensus in the law that allowed for the advent of a new tort as a complete remedy for the wrong Ms. Ahluwalia suffered. I recognize further that, in any given case, the parties' pleadings and the evidence presented shape how far a court can and should go in taking up its properly cautious role of expanding, or not, the basic law of torts. In this instance, the recognition of the new tort rests on the pleadings and the

evidence of the varied forms of coercive control in the Ahluwalia marriage as found by the trial judge. In recalling this fundamental point, I do not foreclose the possibility that the common law of torts may continue to evolve to redress violence within family relationships on the basis of different facts pleaded in future cases, including violence against other family members, such as children and elders, as well as forms of intimate partner abuse not raised by Ms. Ahluwalia.

[19] In arguing that the established torts are adequate here, Mr. Ahluwalia makes two identifiable errors of method. First, he neglects to consider how intimate partnerships themselves contribute to defining the very nature of the civil wrong which the law currently fails to answer fully. The intimate partnership forms an essential element of the new tort of intimate partner violence because it indicates how conduct that might otherwise amount to battery, assault, or IIED grounds a distinct cause of action in this setting. As tortious conduct, intimate partner violence can only be understood with due regard to the economic and emotional interdependence, and the attending vulnerabilities, that characterize intimate partnerships and set them apart from arm's-length relationships. An intimate partnership is at once a place where people can flourish as partners and one that exposes their vulnerability; as L'Heureux-Dubé J. wrote in dissent in *Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 554, at p. 633, families can be both a site for "individual fulfilment" and for "oppression". Intimacy can provide privacy that gives peace and safety for the couple who find strength together in a shared life. But as recalled by my colleague Karakatsanis J. in *Barendregt v. Grebliunas*, 2022 SCC 22, [2022] 1 S.C.R. 517, at para. 144, privacy can be an obstacle to proving abuse because family violence "often takes place behind closed doors". Unlike the Court of Appeal, the trial judge rightly recognized that the

tortious conduct in question was so inextricably bound up in the "context" of the intimate relationship that the relationship had to be recognized as an element thereof (para. 52).

[20] Second, Mr. Ahluwalia fails to consider how the typically gendered character of the conduct — a matter for which there is emerging acceptance in the legal authorities — fundamentally shapes the law's understanding of the coercive wrong and the resulting injury which the novel tort is designed to answer in intimate partnerships. This Court has underscored the gendered character of intimate partner violence in the past. As my colleague Martin J. wrote in *Michel v. Graydon*, 2020 SCC 24, [2020] 2 S.C.R. 763, at para. 95, "[w]omen in relationships are more likely to suffer intimate partner violence than their male counterparts" (see also Government of Canada statistics explained in P. Gupta, "Private Wrongs, Public Impact: The Case for a Tort of Family Violence" (2025), 36:2 *Can. J. Fam. L.* 185, at p. 187; D. Sowter and J. Koshan, "'Weaponizing' The Tort of Family Violence? Myths, Stereotypes, Lawyers' Ethics and Access to Justice" (2024), 40 *Windsor Y.B. Access Just.* 311, at p. 315). Gendered assumptions and the discounting of the intimate partner context can lead to a misapprehension and an underestimation of harm in tort, particularly in cases of non-physical abuse (S. Eisen, "Damages for Spousal Violence — Why are They So Low?" (2024), 43 *C.F.L.Q.* 181, at pp. 195-96). Some scholars have helpfully argued that a proper understanding of the typically gendered character of civil liability for intimate partner violence requires a [TRANSLATION] "feminist reconceptualization of the principles of extracontractual liability" (L. Langevin and N. Des Rosiers, with the collaboration of M.-P. Nadeau, *L'indemnisation des victimes de violence sexuelle et conjugale* (2nd ed. 2012), at para. 11). I agree. This encourages the adoption of

analytical tools that help bring to light both the coercive wrong and the harm associated with intimate partner violence — something that existing torts, without the benefit of this perspective, have not adequately done. To be clear: this is not to say women are the only victims of intimate partner violence, but women's experiences of the deprivation of autonomy and inequality draw into focus the coercive nature of this new tort and the wrong it seeks to address for all intimate partners who face comparable vulnerabilities.

[21] These two methodological concerns — the setting of intimate partnerships, and the typically gendered character of the wrong to dignity, autonomy, and equality caused by coercive control — go to the core of facts pleaded by Ms. Ahluwalia and her cause of action in tort. Accommodating these perspectives cannot be done by adopting a new attitude to calculating damages for existing torts. They call for the identification of a new tort of intimate partner violence, alive to coercion and control in intimate partnerships as a civil wrong, and the resulting harm to dignity, autonomy, and equality — experienced chiefly by women — as the harm itself. As one scholar observed, "coercive control is . . . designed to stifle and co-opt women's new freedoms and opportunities for independence; . . . close the spaces in which they can reflect critically on their lives; and reimpose obsolete forms of dependence and personal service by micromanaging the enactment of stereotypic gender roles through 'sexism with a vengeance'" (E. Stark, *Coercive Control: How Men Entrap Women in Personal Life* (2nd ed. 2023), at p. 243).

[22] The Court of Appeal's principal objection to the trial judge's recognition of a new tort here was that the existing torts provided an adequate remedy for

Ms. Ahluwalia's claim. Some of the court's criticism of the trial judge's reasoning strikes me as appropriate. I agree, for example, that some patterns of tortious conduct that include long-term physical and emotional abuse can be captured by existing torts. However, in my respectful view, the Court of Appeal's decision not to recognize a new tort amounted to a reviewable error of law on two bases. First, it neglected to identify that the core feature of Ms. Ahluwalia's claim rested on the distinct wrong of coercive control, and the distinct harm to her interests in dignity, autonomy, and equality in the relationship at issue. These are the gaps in the existing torts that justify a new tort of intimate partner violence. Second, it erred by stretching existing torts beyond their doctrinal limits to accommodate Ms. Ahluwalia's claim, rather than recognizing a more narrowly tailored new tort. Existing torts, even where addressed through higher or aggravated damage awards, cannot accommodate the coercive character of the wrong addressed here.

[23] The evidence accepted at trial points to this civil wrong and the resulting harm that were distinct from those associated with the existing torts. I reject Mr. Ahluwalia's submission before the Court of Appeal that the trial judge invented the occasion to create a new tort in a manner that was procedurally unfair and unsupported by argument. Ms. Ahluwalia, self-represented for the better part of the trial proceedings, consistently rested her claim, in part, on Mr. Ahluwalia's controlling nature, conduct that the trial judge recognized as a "pattern of coercive and controlling behaviour" (para. 32). Ms. Ahluwalia's pleadings and the evidence she presented substantiate the fact that her losses were not confined to physical and psychological harm, but also reflect the fact that she had been dominated by Mr. Ahluwalia's will throughout the marriage.

[24] The trial judge properly concluded that the existing torts would incompletely address the wrong and the harm associated with intimate partner violence. I agree that some of the impugned abusive conduct resulting in physical and psychological injury were "included" in Mr. Ahluwalia's pattern of coercive and controlling conduct during the marriage (trial reasons, at paras. 103 and 111). However, most respectfully, in my view, the compensatory damages required to remedy the new tort could not be the identical amount as that for existing torts.

[25] In the result, and given the settlement between the parties, the quantum of damages Mr. Ahluwalia owes Ms. Ahluwalia remains at $100,000, as determined by the Court of Appeal. I would specify that the amount represents compensatory damages awarded to correct the loss Ms. Ahluwalia suffered as a result of the tort of intimate partner violence on that basis alone, and not for the "included" torts of assault, battery, and IIED. I would set aside the portion of the order of the Court of Appeal that declined to recognize a new tort in this case and leave undisturbed, as on appeal, the trial judge's conclusions relating to the other remedies ordered. I propose therefore to allow the appeal in part, without any order as to costs.

II. Background

[26] The parties met through their respective families and, after a short courtship, they were married in India on November 28, 1999. At the start of their marriage, they lived with Mr. Ahluwalia's parents. In 2001, a first child was born and soon thereafter, they moved to Canada to pursue a brighter financial future. Obtaining recognition for the equivalence of the substantial education Mr. and Ms. Ahluwalia had undertaken outside of Canada proved difficult. The couple lived modestly upon

arriving in this country. They both worked in a plastics factory in Etobicoke, alternating shifts to care for their young child. Ms. Ahluwalia changed jobs. A second child was born in 2004.

[27] Mr. Ahluwalia became a truck driver. The parties bought their first home in Brampton in 2005. They engaged socially there and, while Mr. Ahluwalia's fortunes in the truck industry improved, family finances remained challenging. Ms. Ahluwalia volunteered on community radio and television. They moved to Edmonton for a time where Mr. Ahluwalia worked full-time as a truck driver and Ms. Ahluwalia cared for the children and worked part-time outside the home at a bank. While in Edmonton, their relationship became increasingly fraught, and Ms. Ahluwalia was diagnosed with depression. In 2013, Mr. Ahluwalia threatened to initiate divorce proceedings, but later his father came to Canada to help smooth things over between the parties.

[28] Mr. Ahluwalia moved back to Brampton in 2014 and the rest of the family followed suit in 2015. The relations between the parties continued to be difficult. They stopped communicating with one another except through their children. The couple separated permanently in 2016. At the time of separation, Mr. Ahluwalia was 48 years old and Ms. Ahluwalia was 47. After the separation, Ms. Ahluwalia remained in the family home with the children. Mr. Ahluwalia continued to pay upkeep on the house. The eldest child refused to see Mr. Ahluwalia after the separation and, soon after, the younger child also refused to see him.

III. Proceedings

[29] In 2016, Mr. Ahluwalia initiated divorce proceedings. In her court-filed answer, Ms. Ahluwalia, who was represented by counsel at the time, agreed that a divorce should be pronounced between the parties. She sought sole decision-making authority for the children, child support, spousal support, property equalization, and sale of the matrimonial home. She also made allegations that Mr. Ahluwalia had been "verbally", "mentally", and "physically" abusive to her during the marriage "on a regular basis" and sometimes in the presence of others, including their children (Mr. Ahluwalia's Compendium, at pp. 113-14). She said that Mr. Ahluwalia obliged her to be a stay-at-home mother rather than work outside the home, that he refused to allow her to upgrade her education in Canada, that he controlled all family finances, and that when she did work, he took control of all her salary. Because of her isolation in Canada, she "continued to obey and placate [her] husband", although she informed a family doctor and a friend of the abuse (p. 114).

[30] In his reply, Mr. Ahluwalia denied all the allegations of physical, verbal, and psychological abuse. He denied preventing Ms. Ahluwalia from seeking work, saying she chose not to work. He said he did not take her salary when she did work, and that she had otherwise asked him to manage the family finances (Mr. Ahluwalia's Compendium, at pp. 138 and 140-41).

[31] No longer represented by counsel, Ms. Ahluwalia filed an amended answer to Mr. Ahluwalia's original application for divorce in 2021. She added a request for an order for damages for the abuse suffered by her at the hands of her husband (Mr. Ahluwalia's Compendium, at p. 126). She alleged specifically that Mr. Ahluwalia "was physically, emotionally, mentally and verbally abusive throughout [the] marriage" (p.

132), that she was "mentally tortured" by her husband when he would not agree to her visiting her dying mother in India, and that he "exercised his controlling nature over [her] as he did not allow [her] to work or upgrade [her] skills" (p. 133). She recounted incidents of allegedly "cruel" behaviour towards the children and pointed to conduct that allegedly had an "impact on [her] psyche due to the constant torture inflicted upon [her] by [her] husband and his family" (*ibid.*).

[32] Mr. Ahluwalia filed an amended reply in which he denied the basis for this new claim in damages, noting further that her claim for damages was statute-barred, and that it "ha[d] no causation" (Mr. Ahluwalia's Compendium, at p. 149). He alleged that Ms. Ahluwalia wrongly said that "[e]very negative impact in her life and that of the children ha[d] become related to the marriage and separation" and that "[s]he ha[d] made a mockery of the proceedings" (*ibid.*).

IV. Judicial History

A. *Superior Court of Justice, 2022 ONSC 1303, 161 O.R. (3d) 360 (Mandhane J.)*

[33] Following an 11-day trial, the trial judge issued a series of orders bearing on, in particular, child and spousal support under the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), the equalization of family property under the *Family Law Act*, R.S.O. 1990, c. F.3 ("*Family Law Act*"), and Ms. Ahluwalia's claim for tort damages at common law. Most relevant to the present appeal is the order for tort damages. The trial judge wrote that the marriage "was characterized by [Mr. Ahluwalia's] abuse, and a 16-year pattern of coercion and control" and, as such, "it was violent" (para. 5). This conduct was not compensable under the *Divorce Act*: "[o]n the rare and unusual facts

before me, [Ms. Ahluwalia] is entitled to a remedy in tort that properly accounts for the extreme breach of trust occasioned by [Mr. Ahluwalia's] violence, and that brings some degree of personal accountability to his conduct" (*ibid.*). The trial judge directed that Mr. Ahluwalia pay Ms. Ahluwalia $150,000 in compensatory, aggravated, and punitive damages.

[34] The trial judge rejected the argument that the tort claim was statute-barred. Citing s. 16(1)(h.2) of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, she decided that no limitation period applied as the claim was "based on an alleged assault while the parties were in an 'intimate relationship' and/or in a relationship of dependency" (para. 30).

[35] She further held that the no-fault regime in the *Divorce Act* was not a bar to bringing an action in tort for family violence in the same proceedings. The trial judge wrote that "where there is a long-term pattern of violence, coercion and control, only an award in tort can properly compensate for the true harms and financial barriers associated with family violence" (para. 46). Allowing a litigant to seek damages for family violence in the same court is a matter of access to justice, as it is "unrealistic to expect a survivor to file both family and civil claims to receive different forms of financial relief after the end of a violent relationship" (para. 47).

[36] The trial judge then held that it was appropriate to recognize a new common law tort of family violence in this case. To understand Ms. Ahluwalia's claim for damages, she observed, "the relevant factual context is the entire 16-year pattern of emotional, mental and psychological abuse, coupled with an inherent breach of trust"

(para. 48). The trial judge explained the rationale for recognizing the tort of family violence, citing specifically the method outlined in *Jones* which encourages a review of legislative initiatives, a comparative review of caselaw, and Canada's international obligations. Taking as a starting point the definition of "family violence" in s. 2(1) of the *Divorce Act*, she drew on American, Canadian, and international sources in support of her view that three modes of liability underlie the elements of the common law tort of family violence: (1) if the conduct of a family member is violent or threatening; (2) if the conduct constitutes a pattern of coercive and controlling behaviour; or (3) if the conduct causes the plaintiff to fear for their own safety or that of another. For the trial judge, the first mode of liability was "consistent with the well-recognized intentional torts of assault and battery"; the third mode as she saw it was "consistent with battery, and/or intentional infliction of emotional distress" (para. 53). Under the second mode of liability, the trial judge wrote, "the plaintiff must establish that the family member engaged in behaviour that was calculated to be coercive and controlling to the plaintiff" (*ibid.*).

[37] The trial judge noted 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 abuse" (*ibid.*).

[38] The trial judge concluded that this was one of those rare circumstances where the common law should recognize a new basis for liability in tort.

[39] On a review of the material facts, the trial judge held that Mr. Ahluwalia should be held liable in damages for family violence. She found Ms. Ahluwalia's account credible, in which she stated that her husband's use of physical violence sought to condition her to obey him from the start of the marriage, and rejected Mr. Ahluwalia's defence that his wife was lying about the abuse out of anger over his leaving her. Instead, the trial judge accepted Ms. Ahluwalia's explanation that she stayed in the marriage because she faced "obvious financial barriers" that prevented her from leaving (para. 76). On the evidence, the trial judge found that Mr. Ahluwalia engaged in serious physical assaults in 2000, 2008, and 2013 designed to "condition" Ms. Ahluwalia to understand that her husband "would meet challenges to his authority with physical violence" (para. 99). In reference to these incidents, the trial judge concluded that while her analysis was specifically presented under the tort of family violence, "in the alternative, I find that [Mr. Ahluwalia] committed the included tort of assault" on these three occasions (para. 103).

[40] Next, the trial judge assessed liability based on behaviour by Mr. Ahluwalia that was "calculated to be coercive and controlling" (para. 104). The physical abuse was part of this "overall pattern designed to condition and control [Ms. Ahluwalia], and which also included psychological and financial abuse" (para. 104). Ms. Ahluwalia was also subject to a form of "silent treatment" where Mr. Ahluwalia would not speak to her until she complied with his sexual demands (trial reasons, at para. 106). Again, the trial judge wrote that while her analysis of this part of the

evidence gave rise to liability under the “new tort of family violence”, she was also of the view, in the alternative, that Mr. Ahluwalia had committed the “included tort” of IIED “insofar as his pattern of coercive and controlling behaviour was ‘flagrant and outrageous’, calculated to produce harm, and resulted in [Ms. Ahluwalia]’s depression and anxiety” (para. 111).

[41] Turning to the damages that resulted from Mr. Ahluwalia’s wrongful conduct, the trial judge awarded $50,000 in compensatory damages, noting specifically that “the tort award [was] designed to compensate for harm that flowed directly to [Ms. Ahluwalia] from [Mr. Ahluwalia] from family violence” and that it was not to be confused with spousal support which has a “different purpose” (para. 117). The trial judge awarded an additional $50,000 as aggravated damages “due to the overall pattern of coercion and control and the clear breach of trust”, noting as well that Mr. Ahluwalia’s post-separation conduct was “egregious” (para. 119). She added $50,000 in punitive damages, as “[Mr. Ahluwalia’s] conduct calls for strong condemnation” (para. 120). The same $150,000 amount would have applied to her alternative finding of liability under assault and IIED.

B. *Court of Appeal for Ontario, 2023 ONCA 476, 167 O.R. (3d) 561 (Benotto J.A., Trotter and Zarnett JJ.A. Concurring)*

[42] Mr. Ahluwalia appealed, asking that the order of the Superior Court of Justice be set aside and that the tort of family violence not be recognized. He eventually conceded that his conduct gave rise to liability, but only under the trial judge’s alternative finding on the existing torts. He asked that damages be reduced on the basis that they were excessive.

[43] In a unanimous opinion written by Benotto J.A., the Court of Appeal allowed Mr. Ahluwalia's appeal in part. The damage award was reduced by $50,000, the amount the trial judge had awarded as punitive damages. The formal order of the court makes plain that tort damages were awarded to Ms. Ahluwalia, but not on the basis of the tort of family violence: "THIS COURT FURTHER ORDERS THAT the new torts of domestic violence or coercive control as defined in this case shall not be recognized" (C.A. Order, File No. C70439, dated July 7, 2023, at p. 2).

[44] One of the striking features of the reasons of the Court of Appeal is the unequivocal manner in which "[i]ntimate partner violence" — referred to elsewhere in the reasons as "domestic violence" and "family violence" — was recognized as a "pervasive social problem" that takes many forms, "including physical violence, psychological abuse, financial abuse and intimidation" (para. 1). The court observed that it is "axiomatic that intimate partner violence must be recognized, denounced and deterred" (para. 37) and called it the "cancer of domestic relationships" (para. 43). Striking too is the Court of Appeal's decision to distance itself from *Frame v. Smith*, [1987] 2 S.C.R. 99, at p. 110, in which the Court commented on the "undesirability of provoking suits within the family circle". The Court of Appeal characterized these observations as *obiter dictum*, and noted that since then the legislature, the courts, and society as a whole "have come to recognize the reality of intimate partner violence and the need to condemn it" (para. 44). I agree with the Court of Appeal on this point. It is mistaken to rely on *Frame* for the proposition that certain tort claims, including IIED, are not permitted within the family context. Consequently, the Court of Appeal acknowledged that "the trial judge did not err by including a tort claim in a family law proceeding" (para. 46).

[45] The principal issue before the Court of Appeal was not whether intimate partner violence exists, but whether a tort specific to family violence should be created. Noting that the trial judge had found that the Ahluwalia marriage was characterized by "a pattern of emotional and physical abuse and financial control", the Court of Appeal nevertheless concluded that the trial judge had been wrong to create a new tort (C.A. reasons, at para. 3). The Court of Appeal canvassed authorities relating to the creation of a new tort, including Brown and Rowe JJ.'s dissenting reasons from this Court's judgment in *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, [2020] 1 S.C.R. 166, and noted that when remedies already exist, a new tort is not required and should not be recognized. 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" (para. 57, citing to *Nevsun*, at para. 237). Relying on *Merrifield*, at para. 20, the Court of Appeal wrote that changes to the common law are slow and "evolutionary", and that significant change, like that solicited here, is best left to the legislature (para. 50).

[46] The Court of Appeal disagreed with the view that the existing torts of assault, battery, and IIED did not extend to a tortious pattern of physical and emotional abuse. It noted that "[c]ourts have long recognized that patterns of physical and emotional abuse constitute tortious behaviour . . . without limiting their focus to individual incidents" (para. 74), and that a pattern of abuse can justify awarding higher damages. It further stated that "isolated incidents that are not individually tortious may, when viewed in their repetitive and cumulative nature, become tortious" (para. 88). The trial judge erred when she decided that existing torts were not flexible enough to

encompass the pattern of abuse in this case, and that a new tort of family violence was required. In addition to the evidence of three incidents of battery committed by Mr. Ahluwalia, the requirements of assault, which involves creating the apprehension of imminent harm, were met here. Ms. Ahluwalia "suffered constant threats of imminent harm, solidified by actual harm — both physical and emotional" (para. 67). "The pattern of abuse", wrote the Court of Appeal, "caused her to live in a near-constant fear of imminent harm" (para. 67) that satisfied the requirements of assault. The trial judge's findings also met the requirements of the existing tort of IIED: Mr. Ahluwalia's abusive conduct, calculated to be controlling, was flagrant or outrageous and caused Ms. Ahluwalia to suffer a visible and provable illness. The facts, concluded the Court of Appeal, "fall squarely within the existing jurisprudence on battery, assault, and [IIED]" (para. 91).

[47] Even if there were a need for a new tort, the Court of Appeal went on to explain that the trial judge's reliance on the definition of "family violence" under s. 2(1) of the *Divorce Act*, to which the provisions on post-separation parenting plans expressly refer, was misguided. In using this definition adopted to a different end to fashion a new spousal tort, the trial judge erred by ignoring the clear intention of Parliament.

[48] The Court of Appeal rejected Ms. Ahluwalia's proposed new tort of coercive control anchored in intimate partnerships, noting that it was advanced on the basis that proof of harm is not an element of the tort. The court declined to do so because "the elimination of the requirement to prove harm would cause a significant impact on family law litigation best left to the legislature" (para. 106). Ms. Ahluwalia

had also misapprehended IIED: “A proper analysis of the tort of intentional infliction of emotional distress would involve the context of the relationship and the patterns of controlling behaviour causing harm” (para. 107). The court concluded on this point that “there is no impediment to a consideration of the context and pattern of behaviour when assessing the elements of a tort, particularly in a domestic situation” (*ibid.*).

[49] The trial judge had also erred in her assessment of punitive damages. The Court of Appeal agreed with Mr. Ahluwalia that the amounts awarded for compensatory and aggravated damages were high, but chose not to intervene as the assessment of damages by a trial judge attracts a high degree of deference. Furthermore, the Court of Appeal noted that the high quantum reflects an “emerging understanding of the evils of intimate partner violence and its harms” to stay aligned with the evolution of society (para. 128). As to the $50,000 for punitive damages, however, the trial judge failed to follow the relevant legal principles in that she failed to consider whether the award of general and aggravated damages was sufficient to achieve the goals of denunciation and deterrence.

[50] Finally, the Court of Appeal said that the trial judge should not have started her analysis of the broader dispute between the parties with the tort claim. The proper starting point for the determination of financial issues arising from the marriage breakdown is the *Divorce Act* and the *Family Law Act* given that, in family law proceedings, statutory entitlements inform other claims such as those made in tort. In particular, “[c]hild support is a right of the child [that] cannot be set aside for later. A compensatory support award under the *Divorce Act* may impact the quantum of damages” claimed in other respects (C.A. reasons, at para. 140). Similarly, where an

"abuse allegation involves financial abuse, there may be an order for unequal division of net family property" (*ibid.*).

V. Issues and Grounds for Appeal

[51] Leave to appeal was granted by this Court on the question of whether the trial judge was correct to recognize a new tort of family violence as the basis for Mr. Ahluwalia's liability. The other matters in dispute before the trial judge, including the amounts due for support and property equalization, are not in issue in this appeal. Before judgment was rendered on the application for leave, the parties resolved that they would not raise the quantum of damages in this Court and that neither party would seek costs on appeal (A.F., at paras. 18 and 116; R.F., at para. 21). They say that the quantum of damages in tort fixed at $100,000 is settled and that only the basis for liability in tort is in issue before us.

[52] In commenting on these proceedings, one scholar described this aspect of the appeal to our Court as "unusual" in that the matter has been brought by an appellant "who ostensibly won her tort claim in the courts below", but he declined to state whether or not a new tort was justified (Beswick, at p. 429; see also pp. 430 and 449-50). It is true that, while rejecting the existence of a new tort and setting aside the punitive damages, the Court of Appeal confirmed the quantum of general compensatory and aggravated damages awarded to Ms. Ahluwalia at trial, and that this award is not being challenged on appeal. This might give rise to the impression that the Court is being asked to pronounce on the existence of a tort in the absence of a live dispute between the parties, which might be understood to be contrary to its proper adjudicative role in private law matters.

[53] I disagree with this view. The matter is properly before the Court. Not only did the Court grant leave, but neither party argued that, because the quantum of damages was settled, the appeal was moot or that the appeal should be quashed. There is nothing theoretical about the appeal. The Court of Appeal order includes a declaration that "new torts of domestic violence or coercive control as defined in this case shall not be recognized" (C.A. Order, at p. 2). This portion of the order can be construed as a "declaratory ruling . . . which confirms a particular and nominative legal status, relationship, or duty", directly in response to the two parties' submissions (S. A. Smith, *Rights, Wrongs, and Injustices: The Structure of Remedial Law* (2019), at p. 14). Ms. Ahluwalia is thus entitled to challenge that order in this Court as being wrong in law. The order of the Superior Court, which Ms. Ahluwalia seeks to have restored, condemned Mr. Ahluwalia to pay damages "for family violence" (A.R., at p. 84). Mr. Ahluwalia is also entitled to contest that order on appeal as a mistaken reference to a new tort.

[54] Furthermore, the parties' agreement not to appeal the quantum of damages provides no answer to the distinct question of the proper basis in tort for awarding those damages. To conclude from the agreement that no new tort need be recognized presupposes that no additional legally cognizable wrong exists — the very issue that this Court has been asked to decide. The *quantum of damages* and the *basis of liability* — though related — are analytically distinct issues. Identifying the proper basis of tort liability logically precedes the assessment of damages. The parties' agreement does not preclude the Court from determining whether the damages were awarded on the proper basis — namely, whether the damages properly rest on existing torts or require

recognition of a new tort. As I seek to explain below, the factual findings disclose a wrong and harm that are distinct in nature from those addressed by existing torts.

[55] The settlement of damages between the parties does not resolve the issue of the proper measure of compensatory damages, as a matter of law, for harms arising from the tortious conduct in this case. At trial, Ms. Ahluwalia was awarded $100,000 in general compensatory and aggravated damages and $50,000 in punitive damages for the tort of family violence. In the alternative, the trial judge would have awarded the same amount for the "included" torts of assault and of IIED. She did not differentiate the harms associated with the new tort and the existing torts. Under both the primary basis — the new tort of family violence — and the alternative basis grounded in existing torts, she would have awarded the same quantum of damages: $50,000 in compensatory damages for Ms. Ahluwalia's "ongoing mental health disabilities and lost earning potential" (para. 114), and $50,000 in aggravated damages "due to the overall pattern of coercion and control and the clear breach of trust" (para. 119). This $100,000 amount was confirmed by the Court of Appeal as a remedy for harms arising from the existing torts only. The punitive damages awarded by the trial judge, but set aside by the Court of Appeal, are not at issue.

[56] Although the Court is bound by the parties' settlement of damages, the trial judge's failure to indicate that the damages awarded for the new tort and the existing torts would differ raises the issue of whether damages were properly ordered by way of redress for the tort of family violence. I am of the respectful view that her decision to award identical amounts of damages for the new tort and for the "included" existing torts reflects an error in law. The new tort included conduct covered by the existing

torts but expanded the compass of misconduct to coercive and controlling behaviour not covered by battery, assault or IIED. That meant the "alternative" basis of liability grounded solely in existing torts does not account for some of the misconduct that the trial judge found, as a matter of fact, to have occurred and to have caused a distinct harm. Accordingly, in law, the two amounts cannot be the same: if the amount of $100,000 provides full compensation for the harm suffered for the new tort, then the same amount for the existing torts is overcompensation.

[57] The tort of family violence was expounded to cover a "gap" in the existing law — the unique wrong of coercive control unaddressed by existing torts (see trial reasons, at para. 54) — deserving of redress through general compensatory damages, rather than being treated merely as an "aggravation" of physical and psychological harm. If the quantum of general compensatory and aggravated damages required to redress the harms arising from conduct associated with the broader tort of family violence is $100,000, the amount required to remedy the more limited but included torts must be less. As a result, the Court of Appeal's decision to uphold an identical amount in general compensatory and aggravated damages on the basis of existing torts is not deserving of deference.

[58] The existence or non-existence of the new tort of family violence must first be resolved. While it is accepted, by reason of the settlement, that the quantum of damages is determined to be $100,000, this Court cannot be taken as confirming the trial judge's basis of the calculation as correct in law. That basis needs to be addressed. The fact that the Court is not tasked with re-calculating damages does not therefore affect the viability of these proceedings.

[59] A further point bears emphasis. Contrary to Mr. Ahluwalia's submission before the Court of Appeal, the claim for damages grounded in the new tort was not advanced for the first time in Ms. Ahluwalia's closing submissions "after the close of evidence" (Mr. Ahluwalia's Reply Closing Written Submissions at Trial, dated February 28, 2022, at p. 5). At trial, Mr. Ahluwalia argued that Ms. Ahluwalia's claim for damages under a new tort was procedurally unfair because "[n]othing in Ms. Ahluwalia's trial evidence suggested that she was arguing a new tort of family violence or financial abuse" (*ibid.*) — an assertion that Mr. Ahluwalia repeated before the Court of Appeal and that was left unaddressed by the court.

[60] Mr. Ahluwalia's "procedural unfairness" claim, which he had advanced in the Court of Appeal (at para. 31), is unsupported by the record. Ms. Ahluwalia's initial claim for damages expressly rested in part on Mr. Ahluwalia's "controlling nature" (Mr. Ahluwalia's Compendium, at p. 133). The evidence that Ms. Ahluwalia had adduced at trial sought to establish Mr. Ahluwalia's coercive control over her — a claim that she had maintained throughout the trial proceedings. The trial judge recognized that Ms. Ahluwalia's "evidence and submissions made it clear" that she was pleading the new tort (para. 32). Both the trial judge and the Court of Appeal agreed that coercive control was factually established (trial reasons, at paras. 107 and 111; C.A. reasons, at para. 13). Mr. Ahluwalia's closing submissions at trial also engaged directly with Ms. Ahluwalia's claim regarding coercive control — both denying at length that he had controlled and coerced her and rejecting the need to introduce a tort for family violence (Mr. Ahluwalia's Closing Submissions at Trial, dated February 22, 2022, at pp. 3-6). Although Ms. Ahluwalia's claim in part rests on allegations of physical and mental abuse, characterizing it solely in those terms misconstrues the

nature of the claim she advanced and the basis on which she sought redress. The material facts that Ms. Ahluwalia pleaded, properly understood, reveal coercive control as the wrongful conduct that "cr[ies] out for a remedy" (*Jones*, at para. 69).

[61] Furthermore, regardless of whether Ms. Ahluwalia claimed damages under existing torts or a new tort, she was "only obliged to describe to the court and to [Mr. Ahluwalia] what [he] had done to her that warranted a remedy", not to plead in "any particular legal form" (Beswick, at p. 435). Indeed, the trial judge acknowledged that the specific torts need not be expressly named as long as the underlying factual matrix was properly pleaded (Mr. Ahluwalia's Compendium, at p. 224). The trial judge also observed that Ms. Ahluwalia's claim focused on a pattern of abuse throughout the marriage, rather than on specific incidents of abuse (trial reasons, at para. 32). She explained to Mr. Ahluwalia that he was free to advance the position that the alleged tortious conduct was not legally actionable; however, such submission did not relieve her of the obligation to assess Ms. Ahluwalia's claim as pleaded (Excerpt of Proceedings at Trial, vol. IV, at pp. 385-86). It was therefore apparent to both parties and the trial judge that Ms. Ahluwalia advanced a claim that went beyond existing torts.

[62] The fact that Ms. Ahluwalia was self-represented provides additional context to understanding how the trial proceeded. The Ontario *Family Law Rules*, O. Reg. 114/99, "were enacted to reflect the fact that litigation in family law matters is different from civil litigation. . . . They embody a philosophy peculiar to a lawsuit that involves a family" (*Frick*, at para. 11, per Benotto J.A.). Specifically, these family law rules provide judges with the flexibility "to deal with cases justly" through "active management of cases" (r. 2(2), (3) and (5); see also N. Bala, M.-J. Maur and C.

Houston, *Family Law: Text, Cases, Materials & Notes* (11th ed. 2025), at p. 31), which may include "the raising of substantive and evidentiary issues" (*Kainz v. Potter* (2006), 33 R.F.L. (6th) 62 (Ont. S.C.J.), at para. 65). It is of course true that "[a] self-represented party cannot expect special treatment if they chose to represent themselves" (para. 64). The trial judge underscored that Ms. Ahluwalia "must be held to the same standard as a party represented at trial" (para. 35). Nevertheless, judges presiding over family law matters must be alive to barriers that self-represented litigants face, particularly where domestic violence is alleged (R. Birnbaum, N. Bala and L. Bertrand, "The Rise of Self-Representation in Canada's Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers and Litigants" (2012), 91 *Can. Bar Rev.* 67, at pp. 89-90; see also *Barreto v. Salema*, 2024 ONSC 4972, 11 R.F.L. (9th) 31, at paras. 16-18; Canadian Judicial Council, *Statement of Principles on Self-represented Litigants and Accused Persons*, September 2006 (online)). In this context where judges are called on to take "a practical and principled approach to pleadings", the emphasis on substance over form takes on particular significance (*Sethi*, at para. 46). In the present appeal, Benotto J.A. acknowledged Mr. Ahluwalia's procedural unfairness argument but declined to address it. The trial judge plainly acted within her authority, with due sensitivity to Ms. Ahluwalia's status as a self-represented litigant in a family law proceeding, and Mr. Ahluwalia suffered no prejudice associated with what he alleged as procedural unfairness.

[63] Appropriately, the parties' respective arguments on appeal now focus on whether a new tort of family violence should have been created or whether, as the Court of Appeal decided, existing intentional torts of battery, assault, and IIED are adequate to redress the claim made against Mr. Ahluwalia. This particular issue is "posed by the

facts of the case before us" and its resolution by this Court is carefully confined to what is "strictly necessary" to decide this case (*Jones*, at para. 21).

[64] Mindful that Mr. Ahluwalia has acknowledged both his own abusive conduct as tortious and accepted his liability for damages, I propose to consider Ms. Ahluwalia's principal argument that a new tort of family violence should be recognized in order to redress her husband's abusive conduct under the following four headings: (A) The principles governing the development of the common law of torts; (B) A consolidated framework for the recognition of new torts; (C) Assessing the need for a novel tort of intimate partner violence; and (D) Situating tort claims in a family law proceeding.

VI. Analysis

A. *The Principles Governing the Development of the Common Law of Torts*

[65] Common law jurisprudence in Canada reveals a largely settled method for how and when novel causes of action in tort should be recognized. Although the caselaw presents some differences in emphasis, a principled framework can nonetheless be identified for the recognition of a new tort in Canadian authorities. This Court, in *Nevsun* (at para. 243), referred to *Jones* in which Sharpe J.A. recognized a tort action for "intrusion upon seclusion" as an appropriate response to the inadequacy of existing torts to accommodate a civil action for invasion of privacy, a case I find provides helpful guidance (*Jones*, at para. 65). Sharpe J.A.'s concern of whether the "facts that cry out for a remedy" has been widely cited in scholarship and jurisprudence as a foundational methodological premise (para. 69; see, e.g., *Nevsun*, notably at para.

241, per Brown and Rowe JJ., dissenting in part; Beswick, at p. 438; M.-J. Maur, "The Ontario Court of Appeal's Decision in *Ahluwalia v. Ahluwalia* — Prudence? Or Opportunity Missed?" (2023), 42 *C.F.L.Q.* 107, at p. 108). *Jones* fixes our attention on the factual foundation for an actionable civil wrong or, as Sharpe J.A.'s phrase intimates, "a factual situation the existence of which entitles one person to obtain from the court a remedy against another person" (see *Letang v. Cooper*, [1965] 1 Q.B. 232 (C.A.), at pp. 242-43, cited by Beswick, at p. 433). The idea from *Jones* that the facts must cry out for a remedy serves as a reminder to judges to proceed with caution in this exercise.

[66] Mr. Ahluwalia contends that existing causes of action are sufficient to redress the wrongs alleged in Ms. Ahluwalia's proceedings, such that the recognition of a new tort is unnecessary. He warns against the risks of doctrinal instability arising from unnecessary judicial innovation. Ms. Ahluwalia answers that existing torts fail to address the cumulative, systemic nature of intimate partner and family violence, and that the recognition of a distinct tort of family violence is necessary to fill this gap.

(1) Judicial Development of Tort Law Is Constrained by Incrementalism and Necessity

[67] It is often remarked in Canada and elsewhere that the common law is a dynamic rather than static institution. While the development of the law is of course not unrestrained, new torts may emerge to respond to evolving social conditions as a legitimate, albeit limited, feature of the law (see, e.g., L. N. Klar and C. S. G. Jefferies, *Tort Law* (7th ed. 2023), at pp. 2-4; G. H. L. Fridman, "Torts — Staying Alive" (1997), 2:1 *Newcastle L. Rev.* 23, at pp. 23-24; J. G. Fleming, *The Law of Torts* (9th ed. 1998),

at p. 7; W. L. Prosser, *Handbook of the Law of Torts* (4th ed. 1971), at pp. 3-4). The common law is sometimes described as in a state of perpetual growth, "forever fructifying, finding new reasons for creating liability for the harmful consequences of one's acts" (G. H. L. Fridman, *Torts: A Guide for the Perplexed* (2017), at p. 159).

[68] The development of new torts, however, is shaped by the same concerns for caution and boldness that characterize judicial changes in the common law more generally. On the one hand, courts are the "custodians of the common law", and on them rests the "duty to see that the common law reflects the emerging needs and values of our society" (*R. v. Salituro*, [1991] 3 S.C.R. 654, at p. 678). On the other hand, "in a constitutional democracy such as ours it is the legislature and not the courts which has the major responsibility for law reform", and upon this responsibility the judiciary cannot intrude (*Salituro*, at p. 670, citing *Watkins v. Olafson*, [1989] 2 S.C.R. 750, at pp. 760-61).

[69] Judges have developed a set of principles to mediate this tension. As this Court affirmed in *Friedmann Equity Developments Inc. v. Final Note Ltd.*, 2000 SCC 34, [2000] 1 S.C.R. 842, at para. 42, incremental change in the common law is warranted where necessary to "clarify a legal principle", "resolve an inconsistency", or ensure the law remains "in step with the evolution of society". At the same time, the consequences of this incremental change must be capable of assessment (*ibid.*). Courts are ill-suited to make complex policy changes and rightly shy away from work better left institutionally to legislative action (see R. J. Sharpe, *Good Judgment: Making Judicial Decisions* (2018), at pp. 87 and 93). It is no doubt true that faced with the facts in a single case, "[t]he court may not be in the best position to assess the deficiencies

of the existing law, much less problems which may be associated with the changes it might make" (*Watkins*, at p. 760).

[70] Here again, I find the language used in *Jones* helpful in charting the right path for the courts. After his review of relevant Canadian and international authorities, Sharpe J.A. concluded that it was "appropriate for th[e] court to confirm the existence of a right of action for intrusion upon seclusion" (para. 65) rather than, as has been aptly said, creating a new tort out of "whole cloth" (*Merrifield*, at para. 25). Given that privacy had long been recognized as an animating value of various traditional causes of action, Sharpe J.A. noted that it was a rational step for "the common law to evolve to respond to the problem posed by the routine collection and aggregation of highly personal information that is readily accessible in electronic form" (*Jones*, at para. 68). This exercise of confirmation is at once forward- and backward-looking, and is not an endpoint — the term "emerging acceptance of claims" was invoked in *Merrifield* to explain the path traced in *Jones* (*Merrifield*, at para. 25). But *Jones* also used language that can fairly be associated with innovation, in that Sharpe J.A. proposed the "[r]ecognition" of a cause of action that was absent in the law as it stood, and that "would amount to an incremental step" that is within the province of the judicial function (para. 65). The authorities he canvassed showed a trend in the cases that "leave[s] open the possibility that such a cause of action does exist" (para. 25), and Sharpe J.A. proposed the cause of action to fill that gap. In their dissenting opinion in *Nevsun*, Brown and Rowe JJ. acknowledged that *Jones* is "a rare and instructive example of where a proposed new nominate tort was found by a court" (para. 243).

[71] The balance that courts must strike also reflects the distinct institutional capacity of the judiciary relative to other branches of government. Practically speaking, courts are designed to resolve real disputes between real parties. Unlike the legislative branch, they are not properly equipped with the tools necessary to study and examine the full scope of policy concerns or repercussions that may arise from a complex legal innovation. By contrast, modest and necessary judicial changes that align the law with an emerging social consensus do not raise these same concerns. Courts typically refrain from initiating developments of tort law whose ramifications are uncertain or for which a consensus remains elusive. Judges exercise restraint in the recognition of new torts for these very reasons. For example, in *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, at para. 75, the Court declined to recognize a freestanding tort of "bad faith discharge", citing the absence of supporting authority. Rather than undertaking a shift in the law for which the consequences were uncertain, the Court observed that change was best left to the legislature (paras. 76-77).

[72] Yet as author John G. Fleming noted, "the courts have shown no inclination at any stage to disclaim their creative functions, if considerations of policy pointed to the need for recogni[z]ing a new cause of action" (p. 7). In seeking the proper balance, the court in *Caplan v. Atas*, 2021 ONSC 670, 71 C.C.L.T. (4th) 36, at para. 168, recognized a tort of internet harassment. Mindful of *Merrifield*, at para. 53, in which the Court of Appeal had said that harassment, while not foreclosed in some contexts, was seen as unnecessary given the scope of existing torts, Corbett J. found extraordinary campaigns of malicious harassment on the internet cried out for a remedy, and that the tort of IIED was inadequate in that it required a visible and provable illness (*Caplan*, at paras. 169 and 174). While there was no evidence before

the court that the plaintiffs had suffered a visible and provable illness, the court recognized that the persistent and repetitive nature of online harassment amounted to facts pointing to a wrong and to harm that called for a remedy, before such an illness occurred (paras. 169-70). *Caplan* illustrates how the common law develops incrementally from precedents based on new facts presented before the courts. As the High Court of Australia similarly observed, although the law evolves with due regard to the broader social and legal context, "the incremental and analogical approach of the common law" ultimately requires that its development "reflect the facts in issue in [the] proceeding" (*A.A. v. The Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle*, [2026] HCA 2, at para. 300). This aligns with the longstanding incrementalist view that new rules in tort law "come into existence only by a series of analogical extensions spread over a long period of time" (see P. H. Winfield, *A Text-Book of the Law of Tort* (5th ed. 1950), at p. 18).

(2) Necessity Requires the Absence of Adequate Remedies

[73] The Court's decision in *Nevsun* provides insight into what constitutes an adequate remedy. In *Nevsun*, three Eritrean workers alleged that they were indefinitely conscripted through their country's military service into a forced labour regime where they were required to work at a mine owned by a Canadian company in Eritrea. The plaintiffs claimed that the conduct to which they were subjected breached customary international norms that prohibited forced labour, slavery, cruel, inhuman or degrading treatment, and crimes against humanity, and was actionable under Canadian law. The defendant moved to strike the claim. On appeal, the Court considered whether

recognition of new civil remedies for the alleged breaches was possible under the common law or if existing remedies were sufficient.

[74] Mr. Ahluwalia points to the reasons of Brown and Rowe JJ. over those of the majority in *Nevsun*, for guidance on the recognition of novel torts. He argues that a new tort should not be recognized if (1) adequate alternative remedies exist, (2) the alleged conduct is not clearly wrongful in tort, or (3) the development would create indeterminate or substantial legal change (*Nevsun*, at para. 237; R.F., at para. 26, fn. 27).

[75] It is true that the dissenting reasons of Brown and Rowe JJ. in *Nevsun* carries forward the helpful reminder of the importance of incrementalism in the development of new torts and that the majority did not set out a general set of principles for the recognition of new torts in response to the motion to strike. But writing for the majority, Abella J. did provide guidance on the adequacy of existing remedies, a critical matter in the present appeal. For Brown and Rowe JJ. in *Nevsun*, adequate remedies will suffice in the form of another tort, an independent statutory scheme, or judicial review (para. 238). They need not serve the remedial and compensatory objectives of tort law, but can be achieved by other means, such as criminal sanction (para. 214). In the circumstances, said Brown and Rowe JJ., "all torture is battery . . . albeit a particularly severe form thereof" (para. 216).

[76] For the majority in *Nevsun*, it was "at least arguable" that the plaintiffs' allegations were not captured by existing torts, and that it may be necessary to recognize new remedies (paras. 123 et seq.). This potentially included "the recognition

of new nominate torts" or the adoption of other remedies based directly on breach of customary international law (para. 127). Notable here is the majority's comments that existing torts may be insufficient because harm caused by forced labour, slavery, crimes against humanity, or cruel, inhuman or degrading treatment is "sufficiently distinct in nature from those of existing torts" (para. 126). On that basis, "torture is something more than battery [and] slavery is more than an amalgam of unlawful confinement, assault and unjust enrichment" (*ibid.*). This is generally understood not to be simply a difference in the extent of the harm suffered, but in the quality of wrong or the nature of the harm (compare *Non-Marine Underwriters, Lloyd's of London v. Scalera*, 2000 SCC 24, [2000] 1 S.C.R. 551, at para. 27). Refusing to make such distinctions "may undermine the court's ability to adequately address the <u>heinous nature of the harm</u>" (*Nevsun*, at para. 125 (emphasis added)).

[77] Read carefully, *Nevsun* does not support Mr. Ahluwalia's view. The issue in this appeal is not merely the extent of the harm, but its nature. The quality of the wrongful conduct associated with intimate partner violence and the nature of the harm invoked by Ms. Ahluwalia set the new tort apart from existing torts. An adequate remedy is one capable of capturing the nature and scope of the wrong and the harm as a whole.

[78] The focus on the adequacy of existing remedies in this framework also aligns with tort law's anchor in corrective justice. Tort law seeks, above all things, to restore the victim to the position they would have been in but for the defendant's wrong. Key to corrective justice is the idea that "the plaintiff and defendant are linked in a correlative relationship of doer and sufferer of the same harm" (*Clements v. Clements*,

2012 SCC 32, [2012] 2 S.C.R. 181, at para. 7, citing E. J. Weinrib, *The Idea of Private Law* (1995), at p. 156; *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, [2020] 2 S.C.R. 420, at para. 34). This relationship explains "why the plaintiff is the party entitled to a remedy" for which the defendant is liable (*Atlantic Lottery*, at para. 34 (emphasis deleted)). Where no adequate remedies are available under existing torts to redress a wrong committed, the recognition of a novel tort therefore properly responds to the principle of corrective justice by providing a remedy for correcting the wrong.

[79] Furthermore, the existence of a statutory scheme may render the recognition of a new tort unnecessary (see *Seneca College of Applied Arts and Technology v. Bhadauria*, [1981] 2 S.C.R. 181, at pp. 194-95; *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, [2014] 3 S.C.R. 176, at para. 60; *Nevsun*, at para. 238, per Brown and Rowe JJ.). Legislation that either bars a tort remedy or that would be frustrated by the advent of a new tort may be a sign that the competent legislature seeks to preclude judicial innovation of the sort spoken to in *Jones* (see also *Watkins*, at pp. 760-61). I note that no such statutory scheme exists that precludes the need for a new tort here. The fact that the *Divorce Act* only refers to family violence in relation to parenting orders does not signal Parliament's intention to bar the recognition of a new tort of intimate partner violence. In point of fact, it suggests a gap, rather than a direction to oust or displace the common law (*R. v. Basque*, 2023 SCC 18, at para. 40). In this case, the statutory regime requiring consideration of family violence when making parenting orders cannot be said to close down common law remedies for intimate partners who allege violence. As the trial judge noted, the *Divorce Act* does not provide victims of intimate partner violence with "a direct avenue to obtain reparations for harms" that flow from intimate partner violence and "that go well-

beyond the economic fallout of the marriage" (para. 46, citing *Leitch v. Novac*, 2020 ONCA 257, 150 O.R. (3d) 587).

(3) Incremental Development May Favour New Torts Over Modified Torts

[80] Understanding the proper scope for the development of tort law by the courts when existing remedies prove inadequate begs the question: why should a court recognize a new tort when, instead, it can develop and expand the scope of existing torts? While Mr. Ahluwalia accepts that courts can recognize new torts, he also argues that this Court should refrain from recognizing one to address intimate partner violence because existing remedies are, in his view, sufficiently flexible to address the wrong at issue (R.F., at para. 39). The reasons of the Court of Appeal suggest a preference for this approach, at least insofar as it states that "[t]he existing torts are flexible enough to address the fact that abuse has many forms" (para. 92). For instance, Ms. Ahluwalia was deprived of her free choice on how to conduct her career and was forced into an economic role within the household that she did not wish to have. Mr. Ahluwalia took control of the family finances, including her money, as a means of stripping her of her autonomy and subordinating her within the relationship. The Court of Appeal recognized that this conduct "fall[s] squarely" within existing torts (at para. 91), even though the resulting harm extended beyond emotional distress.

[81] Mr. Ahluwalia's view would indicate that, where the facts call out for a remedy, courts should endeavour to confine their changes to tort law to adjusting existing tort categories rather than recognizing new torts. This approach, however, comes with risk. Where existing torts are interpreted so "flexibly" that they become distorted beyond their core purposes, they may invite unintended consequences when

the changed element of an existing tort is applied in another setting. Incrementalism does not invariably favour the flexibility of existing torts; where change would require recasting a tort's established boundaries, it may prove less incremental than the creation of a new cause of action (J. Goudkamp, "New Torts", in D. Rolph, J. Eldridge and T. Pilkington, eds., *Australian Tort Law in the 21st Century* (2024), 48, at p. 54).

[82] Recent caselaw and scholarship in the area of privacy torts illustrate the need to strike the proper balance between change within existing torts and the incremental recognition of new tort remedies. Interference with privacy rights has historically coincided with intrusion into property: gaining knowledge of another person's private affairs usually required trespass into their private dwelling or the wrongful conversion of their personal journals or notes. However, some have observed that the advent of technology has brought into sharper focus the distinction between the protection of privacy rights and property interests (see S. D. Sugarman and C. Boucher, "Re-imagining the Dignitary Torts" (2021), 14 *J. Tort Law* 101, at p. 115). In *Jones*, for example, the defendant bank employee digitally accessed the banking information of a person barely known to her 174 times, and was able to see the details of that individual's sensitive biographic information and financial transactions without necessarily resorting to trespass or conversion (para. 4). The court recognized intrusion upon seclusion as a stand-alone cause of action, observing that "the law of this province would be sadly deficient if we were required to send [the plaintiff] away without a legal remedy" (para. 69). Scholars have observed that Canadian recognition of the tort of intrusion upon seclusion in *Jones* brought greater certainty to the law than the expansion of existing torts that could have had unanticipated impact in other settings (see, e.g., a discussion of the U.K. experience in T. D. C. Bennett, "Privacy, Corrective

Justice, and Incrementalism: Legal Imagination and the Recognition of a Privacy Tort in Ontario" (2013), 59 *McGill L.J.* 49, at pp. 91-92). And because the court in *Jones* formulated the tort by drawing on established and emerging legal sources, future caselaw is better able to draw on "a rich volume of authority" as to the operation and proper application of the tort (p. 92). Accordingly, where capturing the defendant's conduct would require a redrawing of an existing tort's boundaries, incrementalism may instead favour recognizing a new cause of action (Goudkamp, at p. 54).

B. *A Consolidated Framework for the Recognition of New Torts*

[83] These principles ground a framework for determining when the courts should recognize a novel tort. First, the facts must show a wrongful act that offends a recognized legal interest in private law. Second, the existing remedies must be inadequate. Together, these two elements measure the need for a new tort; it is only when the "felt necessities of the time" require the evolution of tort liability that a novel tort may be recognized (G. H. L. Fridman, "The Evolution of New Torts", in N. J. Mullany and A. M. Linden, eds., *Torts Tomorrow: A Tribute to John Fleming* (1998), 271, at p. 272, citing O. W. Holmes, *The Common Law* (1881), at p. 1). Should that need exist, the analysis proceeds to the third and final step, where a novel tort is tailored to address the wrong in a manner consistent with the purposes of tort law, and the parameters of the proper role of the judiciary. These elements reflect a methodical approach that fosters the coherence, legitimacy, and the incremental development of the law so that the common law can remain properly responsive to changes in society.

(1) <u>A Wrongful Act That Offends a Recognized Legal Interest</u>

[84] First, the facts alleged by the plaintiff must disclose wrongful conduct that offends a recognized legal interest in private law, or an interest around which there is an "emerging acceptance" (*Merrifield*, at para. 25). Here, the courts constrain their inquiry to the facts and the impugned conduct before them (Sharpe, at p. 84; Beswick, at p. 434). A recognized legal interest in private law — such as privacy (*Jones*, at paras. 41 and 57), reputation (*Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at para. 121), or bodily and psychological integrity (*Nevsun*, at para. 126) — is one that is deemed worthy of legal protection in keeping with the "evolution of society" (*Friedmann Equity*, at para. 42).

[85] The decision of the Court of Appeal for Ontario in *Jones* provides, yet again, a prime example where such a legal interest was identified for the purposes of recognizing a new cause of action in tort. There, Sharpe J.A. canvassed *Canadian Charter of Rights and Freedoms* jurisprudence (at paras. 39-46), observing that courts have held that privacy interests protected by s. 8 of the *Charter* are "not simply an extension of the concept of trespass", but are "grounded in an independent right to privacy" (para. 39, citing *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, at pp. 158-59), which includes a right to informational privacy (para. 41, citing *R. v. Tessling*, 2004 SCC 67, [2004] 3 S.C.R. 432, at para. 23). Sharpe J.A. went on to note international human rights instruments that enshrine a right to privacy (at para. 44), legislative frameworks from other provincial jurisdictions that codify a tort for the invasion of privacy (at paras. 52-54), emerging jurisprudence from foreign jurisdictions such the United States, the United Kingdom, and New Zealand (at paras. 55-64), and legal scholarship (para. 66). It is on this basis that the court concluded that "[p]rivacy has

long been recognized as an important underlying and animating value of various traditional causes of action" (*ibid.*).

[86] I agree with Ms. Ahluwalia that *Charter* values can also inform the development of tort law in this area. As Sharpe J.A. observed in *Jones*, *Charter* jurisprudence encouraged the recognition of a new tort of privacy at common law: "The explicit recognition of a right to privacy as underlying specific *Charter* rights and freedoms, and the principle that the common law should be developed in a manner consistent with *Charter* values, supports the recognition of a civil action for damages for intrusion upon the plaintiff's seclusion" (para. 46, citing J. D. R. Craig, "Invasion of Privacy and *Charter* Values: The Common-Law Tort Awakens" (1997), 42 *McGill L.J.* 355). Similarly, the explicit recognition of the value of equality between women and men in *Charter* jurisprudence, including this Court's jurisprudence relating to intimate partnerships such as marriage, encourages the view that the disproportionate impact of violence on women in intimate partnerships is incompatible with the *Charter* value of equality. This encourages the recognition of a new tort, which comports with the long-established principle that the common law must develop in a manner consonant with the *Charter* (see *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573, at pp. 602-3). Respectfully, the Court of Appeal makes no mention of Ms. Ahluwalia's right to equality in her marriage which, in my humble view, is relevant to understanding the civil wrong visited upon her over the 16 years of her marriage.

[87] Finally, meaningful access to justice for victims of intimate partner violence requires due recognition of the legal interest with which the wrongful conduct at issue interferes, informed by a broad range of legal perspectives as potentially

persuasive, while respecting the incremental character of the development of the common law. Absent such recognition, plaintiffs who plead material facts that "cry out for a remedy" would be left without a redress for the specific harm suffered. The approach in *Jones*, as in this case, was grounded in comparative sources, including Quebec private law and international materials, with references to *Charter* jurisprudence to properly inform the recognition of an emerging acceptance of the relevant legal interest. Scholars have argued that authorities relevant to the development of the law relating to gender and violence should include Indigenous legal sources to throw light on a social problem felt by women and vulnerable people generally (E. Snyder, V. Napoleon and J. Borrows, "Gender and Violence: Drawing on Indigenous Legal Resources" (2015), 48 *U.B.C. L. Rev.* 593, at pp. 636 and 652; see also V. Napoleon and H. Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions through Stories" (2016), 61 *McGill L.J.* 725, at p. 750).

[88] Ms. Ahluwalia submits that individuals seeking recognition of tort claims for intimate partner violence currently face significant barriers because they must "pas[s] through a labyrinthine web of different claims, with different tests and inconsistent thresholds" (A.F., at para. 66). My colleague Karakatsanis J., writing for a unanimous Court, has acknowledged that barriers to access to justice threatens the rule of law (*Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 1). As the law stands, a plaintiff's success in an intimate partner violence claim depends on whether the material facts pleaded are among those "that a court recogni[z]es as redressable" within the current patchwork of existing torts (Beswick, at p. 433). In addition to the technical challenges of proving different torts with different elements, plaintiffs seeking redress for intimate partner violence may find that the whole of their experience

in the facts pleaded does not neatly fit into existing legal categories that are often ill-suited to address their situation, or, as two scholars have observed, that "[p]arsing the lived experience of [intimate partner violence] into legal claims based on different torts" may leave certain aspects of the violence that they endured unaddressed (Sowter and Koshan, at p. 342; see also J. E. Mosher, "Grounding Access to Justice Theory and Practice in the Experiences of Women Abused by Their Intimate Partners" (2015), 32:2 *Windsor Y.B. Access Just.* 149). Relatedly, the intervener the DisAbled Women's Network of Canada noted that forcing plaintiffs "to pursue multiple overlapping tort claims . . . fail[s] to address the broader coercive abuse" because none of these torts "fully capture the unique harm" (I.F., at para. 9). Recognition of a new tort designed to bring out a distinct wrong not addressed by existing torts could encourage victims to take legal action to seek remedy for the injury suffered, as well as assist judges and lawyers in responding with the appropriate understanding of the intimate partnership context.

[89] As the intervener Attorney General of British Columbia submits, "[f]amily violence . . . is conceptually distinct from the individual harms addressed by existing torts" (I.F., at para. 26). The proper characterization of the civil wrong — the first step in the consolidated framework for the recognition of new torts — therefore goes to the heart of ensuring meaningful access to justice. The intervener Women's Legal Education and Action Fund Inc. ("WLEAF") argues, drawing on *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, [2022] 1 S.C.R. 794, at para. 35, that "'[a]ccess to justice means many things', including 'knowing one's rights'" (I.F., at para. 6). A novel tort that accurately frames the legal

interest connected to the wrongful conduct and the resulting harm helps litigants understand their rights.

[90] In the family law context, claimants commence proceedings by filing an application, to which the responding party files an answer, as in this case. In these pleadings, the parties set out the material facts that support their claims; they are not required to plead any specific tort (see *Sethi*, at paras. 46-49, citing *Frick*, at paras. 11-12; Beswick, at p. 435). A new tort grounded in the distinct wrong and distinct harm arising from intimate partner violence increases access to justice because it more accurately reflects the type of evidence that victims of intimate partner violence are able to bring to establish the abuse they suffered, instead of requiring them to fit that evidence within the varying technical confines of existing torts. It therefore simplifies the manner in which litigants may advance these claims and equips judges with a tool to grant redress for the full scope of harm suffered. From this perspective, considerations of access to justice — particularly for self-represented victims of intimate partner violence — provides a further impetus for the recognition of a new tort.

(2) Existing Remedies Must Be Inadequate

[91] Second, existing torts and their associated remedies must be inadequate. If such torts and remedies are capable of addressing the alleged interference, then judicial recognition of a new nominate tort will be unnecessary and, by extension, unwarranted (*Merrifield*, at para. 42). This is not to say that the availability of any tort or remedy that touches on the impugned conduct is sufficient. To be adequate, the existing tort or remedy must be capable of capturing the nature and scope of the wrong. While a

difference of extent of harm resulting from the wrongful act will generally not justify a finding of inadequacy of an existing tort, the severity of the conduct may reach such an extreme as to alter its nature (*Nevsun*, at paras. 124-26). It may be that the wrong — say, coercive control depriving a victim of their autonomy, as opposed to battery inflicting physical injury — fixes on a different legal interest and a different form of injury that cries out for a remedy, even if some misconduct overlaps with existing torts.

[92] One of the lessons from *Jones* is the place of scholarship in the breadth of sources considered by the court in discerning the emerging consensus on the nature of the legal interest protected by tort law and the adequacy of existing torts and remedies. In *Jones*, the focus was not just on whether there was an emerging consensus in Ontario cases: Sharpe J.A. included a consideration of how "legal scholars and writers" had shown that informational privacy, as opposed to mere personal and territorial privacy, supported the recognition of the new cause of action (para. 66).

[93] There is a parallel in the present appeal where scholarship with a sensibility to women's perspectives have helped identify the legal interest protected in intimate partner violence and the relevant wrong. Part of this, like in *Jones*, reflects how scholarship can help shift an entrenched perspective in the cases — an example of what Justice Bertha Wilson, writing extrajudicially, once observed as tort law's "distinctly male perspective" ("Will Women Judges Really Make a Difference?" (1990), 28 *Osgoode Hall L.J.* 507, at pp. 512 and 515; see also L. Bender, "An Overview of Feminist Torts Scholarship" (1993), 78 *Cornell L. Rev.* 575, at p. 575; J. Cowie, "Difference, Dominance, Dilemma: A Critical Analysis of *Norberg* v. *Wynrib*" (1994), 58 *Sask. L. Rev.* 357, at p. 359). Not only does this work assist in identifying the wrong,

but it also assists in signaling where, in cases applying existing torts, the gendered nature of the harm has been imperfectly acknowledged. The concern here is not with ideology, but with a different perspective that encourages the courts to properly recognize the nature of the wrong and of the harm it causes. Engaging with critical viewpoints does not alter the legal method, but it can enrich it by drawing attention to factors which may otherwise remain less plain (Cowie, at p. 357). The development of tort law — whether through clarification or modest increment — must of course remain grounded in principle. But principled evolution is not inconsistent with attentiveness to these perspectives. A feminist lens does not dictate judicial outcomes; it helps ensure that tort law's methods are responsive to the full range of human experience it is meant to govern.

(3) The Novel Tort Must Offer a Proper Response

[94] Where the facts disclose a wrongful act that offends a recognized legal interest and existing remedies are not capable of remedying that interference, courts must turn to the proper formulation of a novel remedy in tort. Here, there is no unique and exhaustive checklist that must be satisfied. A well-formulated tort will ultimately depend on the factual, legal, and social context from which it arises. It is axiomatic that courts must ensure that any tort they recognize is precisely tailored to the wrongful conduct, the legal interest at stake, and the gap it seeks to fill. The recognition of a novel tort is a judicial acknowledgement of a new cause of action grounded in the material facts before the court that were not previously considered redressable (see Goudkamp, at pp. 55-56, citing notably *Wilkinson v. Downton*, [1897] 2 Q.B. 57; Beswick, at pp. 437-38). Accordingly, a new tort must be carefully crafted to fill the

gap in the existing law. Extending it beyond that gap would risk exceeding the proper role of courts in the incremental development of tort law (*Friedmann Equity*, at para. 42).

[95] In sum, Canadian common law has long balanced the need for principled evolution against that of preserving predictability and coherence. Recognition of novel torts must be rare, cautious, and rooted in the incrementalism that reflects appropriate judicial restraint. The jurisprudence of this Court and the appellate courts, along with scholarship, point to three cumulative requirements that must be satisfied to justify the recognition of a new tort: the facts alleged must disclose a wrongful act that offends a recognized legal interest; existing remedies must be inadequate; and the novel tort must be a proper response, in light of the role of the courts in the development of tort law.

C. *Assessing the Need for a Novel Tort of Intimate Partner Violence*

(1) The Wrongful Act and the Interests With Which It Interferes

[96] There is no single, universally accepted term for the type of abusive conduct in which Mr. Ahluwalia has engaged. The terminology itself is unsettled, variously described as "intimate partner violence", "domestic violence", "spousal abuse", "family violence", or "coercive control" (D. Sowter, "Full Disclosure: Family Violence and Legal Ethics" (2020), 53 *U.B.C. L. Rev.* 141, at p. 146; Eisen, at pp. 185 and 200).

[97] Because of its focus on conjugal abuse, the term "intimate partner violence" appears to be the most exacting of these terms, and therefore the one best

placed to speak to the facts alleged by Ms. Ahluwalia here. "Intimate partner violence" does not presume that the violence will unfold in a domestic setting or between legal spouses; it also can describe post-separation abuse (trial reasons, at para. 119). It distinguishes the type of violence at issue here from violence directed at other family members. This is not to suggest that family violence against children, elders or other family members is not independently actionable in tort, but simply that the interests within the intimate partner setting respond to its unique relational dynamic that reflects conjugal intimacy.

[98] While both parties agree that intimate partner violence is wrongful, from the start they have presented diverging views as to its nature and scope. Mr. Ahluwalia suggests that intimate partner violence is best understood as a physical or emotional violation against the victim's person. He concedes that intimate partner violence may manifest as coercive and controlling behaviour, or as the accumulation of a prolonged and sustained series of otherwise non-tortious acts; however, Mr. Ahluwalia presents the injury as physical harm or emotional distress.

[99] Ms. Ahluwalia speaks of intimate partner violence as something broader, characterized by "a violation of victims' fundamental personhood" (A.F., at para. 67). This extends beyond physical and psychological violence to the harm associated with coercion that deprives the victim of their autonomy or freedom of choice. For her, the harms of family violence are not limited to physical and psychological losses. It destroys the victim's "dignity" and "autonomy" (para. 2).

(a) *Intimate Partner Violence Is the Subject of Consistent Condemnation*

[100] Both parties proceed on the basis that violence within intimate partnerships is wrongful, directing their submissions instead to the adequacy of existing legal responses. That shared premise reflects a broader legal and societal consensus that condemns such conduct in unambiguous terms. The parties differ in why the conduct is wrongful and how the law should recognize intimate partner violence as a serious wrong.

[101] A proper understanding of intimate partner violence must begin by examining the relationships in which it occurs. The exercise must start from the reality that intimate partnerships are not confined to formal legal relationships and are highly diverse. As L'Heureux-Dubé J., dissenting, observed in *Mossop* with respect to family status, "the family is not merely a creation of law, . . . the changing nature of family relationships also has an impact on the law" (pp. 626-27). Similarly, the law's understanding of intimate partnerships for the present purposes must remain alive to changing social realities and emphasize substance over form.

[102] For present purposes, an intimate partnership is a relationship of close personal connection, sustained over a period of time, and marked by mutual interdependence, care or commitment, and the presence of domestic, emotional, financial or physical intimacy. It is rooted in conjugality, as opposed to other interpersonal connections, but not defined by sexual relations. It is not defined by existing legal forms like marriage or cohabitation, but on the substantive qualities of the relationship and the fact that it reflects social, financial, and affective interdependence in a manner that is relevant to both partners' agency, sense of self and personal dignity, as well as material and physical well-being (see R. Tremblay,

"Recoding Family Law: Toward a Theory of Relationships of Economic and Emotional Interdependency in the *Civil Code of Québec*" (2023), 68 *McGill L.J.* 249, at pp. 253 and 256-57). This description is not intended to provide a fixed definition of what constitutes an intimate partnership. Rather, it is offered as a guide for identifying relationships that may give rise to certain legal wrongs in tort. An intimate partnership can be at once the place where parties find strength from one another and where parties can fall prey to their own vulnerabilities. Understood in these terms, intimate partnerships become sites of "contradiction": intimacy offers security but can expose a person to danger, including abuse (see *Mossop*, at p. 633). Intimacy promises privacy, yet, that same privacy can be a veil through which others, including the law, sometimes fail to see or properly respond to abusive conduct (see Kelly, at p. 340). Trial judges in the family law context are well placed to determine whether, for the purposes of tort liability, an intimate partnership exists.

[103] The appeal before the Court is concerned with intimate partnerships specifically. Those relationships must be distinguished from other close relationships, like that of a parent with their child, or among friends or strangers. Other types of relationships may be marked with a high degree of closeness and dependence, but are not characterized by the indicia of conjugal intimacy that concern us here (see Tremblay, at p. 262; see also N. Bala, "The History and Future of the 'Legal Family' in Canada", in Queen's Faculty of Law Legal Studies Research Paper Series, Working Paper No. 07-16 (November 5, 2007), at pp. 19-20). Intimate connections between two individuals may be too fleeting to create the degree of closeness or dependence that one expects in a partnership. Those relationships may of course give rise to different kinds of tort liability, but the circumstances of the Ahluwalia couple are different.

[104] Intimate partnerships are conjugal unions between equal partners. Distinguishable from other personal or familial bonds, however meaningful, intimate partnerships create in each partner mutual obligations to share a common life marked by intimacy, interdependence, and respect. Importantly, in their modern guise, intimate partnerships are understood in law as being relationships between equals, rather than relationships in which one of the partners is subordinate to the other. McLachlin J. (as she then was) has similarly described marriage as creating "the interdependence of two co-equals", giving rise to "expectations and obligations" between the spouses (*Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, at para. 30).

[105] Notwithstanding the union of interests in intimate partnerships and the obligations partners have to one another, as equals they retain a degree of personal autonomy such that neither party's interest dominates the partnership. As Professor Carbonnier wrote about the law of marriage in France: [TRANSLATION] "[m]arriage does not entail absorption of one personality by the other . . ." (*Droit civil* (2004), vol. I, at p. 1231). While Quebec family law is different in many respects from that of Ontario, I find the exposition of public order rights and obligations of spouses in marriage and civil unions set forth in arts. 392 and 521.6 of the *Civil Code of Québec* instructive for present purposes: the spouses "have the same rights and obligations" in the union. They "owe each other respect, fidelity, succour and assistance" and are "bound to share a community of life". Although these rights do not apply directly to intimate relationships in Ontario, I see these themes of equality, respect, assistance, and a shared life as similar features in intimate partnerships relevant to this appeal. I note that the *Family Law Act*, in its preamble, speaks of the "equal position of spouses as individuals within marriage" and evokes "mutual obligations" in the family. Whether or not these rights and duties

in the *Civil Code of Québec* are independently enforceable, there is no doubt the mutual duties it contains set the foundations for the standard of conduct each spouse must meet within the marriage or civil union. A spouse who — in defiance of their duties of respect, fidelity, succour, and assistance — behaves in a way that no reasonable spouse placed in the same circumstances would, may be found civilly liable for damages under art. 1457 of the *Civil Code of Québec* (see, e.g., *Droit de la famille — 251674*, 2025 QCCS 4145, holding the male partner liable for violent conduct, including [TRANSLATION] "coercive control" of his spouse (para. 107)).

[106] Marriage is one brand of intimate partnership that is often the site for coercive and controlling conduct capable of depriving a partner of their autonomy in a manner that warrants redress, as the circumstances of the Ahluwalia marriage make plain. It is the intimacy, and the durable partnership based on mutual dependency — not its legal form — that create the setting in which sustained coercion and control can be tortious. Family law scholars have emphasized that "marriage-like" intimate partnerships are defined by "the existence of an emotionally and economically interdependent relationship" (B. Cossman and B. Ryder, "What is Marriage-like Like? The Irrelevance of Conjugality" (2001), 18 *Can. J. Fam. L.* 269, at p. 283). In particular, they identify trust as the foundation of "emotional intimacy" (p. 316). It is this inherent trust that distinguishes misconduct within intimate partnerships from that between strangers. Intimate partner violence not only causes physical or emotional harm, depending on the nature of the act, but also constitutes a fundamental breach of the trust intrinsic to the relationship, rendering it qualitatively different from violence between strangers. Such abusive conduct is a breach of a duty "to act loyally" rooted in the pre-existing intimate partnership that may be compared, in certain respects, to a

parent-child relationship (*K.L.B. v. British Columbia*, 2003 SCC 51, [2003] 2 S.C.R. 403, at para. 49; see also L. Smith, "Parenthood is a Fiduciary Relationship" (2020), 70 *U.T.L.J.* 395, at p. 400). As the trial judge observed, existing torts are incapable of capturing this "inherent breach of trust" associated with coercive and controlling conduct (para. 48; see also para. 59).

[107] Moreover, the vulnerability of a partner to coercion and control can extend beyond the formal end of a partnership. In a post-separation period, for example, coercive control may also take hold, and violence in the same or different forms may deprive the vulnerable party of the autonomy that tort law must continue to recognize as a legally protected interest (see Sowter and Koshan, at p. 340). In fact, it is estimated that "41 per cent of individuals who separate from their abuser suffer physical or sexual violence post break-up" (C. Bruckert and T. Law, *Women and Gendered Violence in Canada: An Intersectional Approach* (2018), at p. 135). Though intimate partnerships may mark the beginning of coercive and controlling conduct that is tortious, the breakdown of such partnerships does not necessarily mark the end of the harmful conduct.

[108] Parliament has signaled its strong legal condemnation of intimate partner violence in the criminal law. In 1983, the marital rape exemption was repealed, confirming that sexual violence within marriage is no less criminal than in other contexts (see *R. v. Kruk*, 2024 SCC 7, at para. 39; see also *Criminal Code*, s. 278). The *Criminal Code* also requires sentencing judges to account for evidence that an offender abused their intimate partner in the commission of an offence, as well as the increased vulnerability of women in intimate partnerships, with particular attention to the

circumstances of Indigenous victims (ss. 718.2(a)(ii) and 718.201). Parliament has introduced further measures to denounce and deter such conduct, in particular s. 718.3(8) which contemplates an increase in the maximum penalties available for indictable offences where violence was used, attempted, or threatened against the offender's intimate partner and the offender was previously convicted for such conduct. How the judiciary has applied these provisions adds further evidence of this condemnation. For instance, sentences for offences involving intimate partner violence have increased in severity in the late 2010s (I. Grant, "The Role of Section 718.2(a)(ii) in Sentencing for Male Intimate Partner Violence against Women" (2018), 96 *Can. Bar Rev.* 158, at pp. 169-70).

[109] Legislation in family matters also show particular concern for intimate partner violence, albeit as a subset of family violence. The *Divorce Act* requires courts to account for family violence in assessing the best interests of the child (s. 16(3)(j) and (4)). The *Divorce Act* also allows anyone who enjoys parenting time, decision-making authority, or contact with a child to be exempted on application from having to provide notices of relocation or change in residence, citing in particular the risk of family violence (ss. 16.8(3), 16.9(3) and 16.96(3)). Legislation in other settings that requires considering family violence when making orders in the family law context exist in provincial law, including in Ontario (see *Family Law Act*, s. 47.4; *Children's Law Reform Act*, R.S.O. 1990, c. C.12, ss. 24(3)(j) and (4), 33.3, 39.1(3), 39.2(4) and 39.3(3)).

[110] Furthermore, intimate partner violence gives rise to other legislative responses across several other areas of law crossing both federal and provincial

jurisdictions (see generally J. Koshan, J. Mosher and W. Wiegers, *Domestic Violence and Access to Justice: A Mapping of Relevant Laws, Policies and Justice System Components Across Canada*, 2020 CanLIIDocs 3160 (online)). It can justify the imposition of protection orders and recognizances (see *Protection Against Family Violence Act*, R.S.A. 2000, c. P-27, s. 2; *Intimate Partner Violence Intervention Act*, S.N.B. 2017, c. 5, s. 4; *Code of Civil Procedure*, CQLR, c. C-25.01, art. 515.1); it is a factor that must be considered when deciding if a child is in need of protection (see *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46, s. 13(1.2)); it discourages alternative dispute resolution methods where there is a history of coercive conduct (see *Family Law Rules*, r. 17(3.2)); it allows victims of intimate partner violence to be relieved from their residential tenancy obligations (see *Civil Code of Québec*, art. 1974.1; *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, ss. 47.1, 47.2 and 47.3); it is a factor regarding the eligibility to some social benefits (see *Individual and Family Assistance Act*, CQLR, c. A-13.1.1, ss. 53 para. 1(9) and 89); and it exempts certain claims from limitation periods (see, e.g., *Limitation of Actions Act*, S.N.S. 2014, c. 35, s. 11). The fact that intimate partner violence is considered relevant to such a wide range of issues demonstrates the many areas of life it can impact. It also reflects consistent legislative condemnation of such violence. These examples of legislative responses to intimate partner violence, like for privacy in *Jones*, reflect an emerging consensus around condemning the wrongful conduct.

[111] Responses to intimate partner violence as a civil, rather than a criminal, wrong have had a more nuanced evolution. Historically, the common law resisted private redress between spouses, citing interspousal immunity. Intimacy traditionally meant that law, including tort law, had little or no part to play in regulating the conduct

between spouses. The better view is the idea that tort law can intervene between partners to address the failure to respect the other's autonomy. Over time, courts have come to more readily recognize liability for civil wrongs in the context of intimate partnerships — though, as will be explained further below, the scope of existing remedies remains limited (see, e.g., *Costantini v. Costantini*, 2013 ONSC 1626, 28 R.F.L. (7th) 356, and *Montgomery v. Kenwell*, 2017 ONSC 3107, 97 R.F.L. (7th) 433, discussed in Eisen, at pp. 193-95).

[112] Clearly, then, an emerging legal consensus exists against violence within intimate partnerships. Canadian criminal law imposes strong responses to such violence, and legislative interventions by both federal and provincial governments across other areas of public and private law demonstrate a strong objection to it. Similarly, the common law no longer protects individuals who commit violence within intimate partnerships through doctrines like interspousal immunity, and judges often impose at least some liability on such individuals using existing causes of action.

(b) *Intimate Partner Violence Is Centered Around Coercive Control*

[113] Recent legislative definitions of intimate partner violence have placed greater emphasis on coercion and control. They recognize discrete incidents of physical and psychological abuse as part of a broader pattern of coercive control, which can envelop other acts that may lose their full importance if considered in isolation. In particular, the *Divorce Act* recognizes "a pattern of coercive and controlling behaviour" as one of the defining features of family violence (ss. 2(1) "family violence" and 16(4)(b); see also, e.g., *Children's Law Reform Act*, s. 18(1) "family violence"; *The*

Children's Law Act, 2020, S.S. 2020, c. 2, s. 2; *Intimate Partner Violence Intervention Act*, s. 2(1); *Family Law Act*, S.B.C. 2011, c. 25, s. 1 "family violence").

[114] The House of Commons Standing Committee on the Status of Women has also recently recognized that coercive control is a "facet of intimate partner and family violence that . . . is dangerous and inadequately addressed", and recommended that the federal government consider legislation to criminalize coercive control (p. 10). This echoes many of the submissions made before us in this appeal. The intervener Registered Nurses' Association of Ontario, for example, argued that the unique harm caused by intimate partner violence associated with coercive control is qualitatively different from the harm caused by wrongful violence between strangers (I.F., at para. 4, citing *R. v. Craig*, 2011 ONCA 142, 269 C.C.C. (3d) 61, at para. 26, a criminal case, where the court adopted an expert's view that in a family setting "[t]he abusers use various means, including physical violence, intimidation, humiliation, and social and economic isolation to gain this 'coercive control'").

[115] This view — that intimate partner violence is more than its underlying discrete events, and that it ultimately remains centered around one partner's conduct designed to dominate the relationship through coercion and control of the other — has been adopted in other jurisdictions. In England and Wales, for instance, s. 76 of the *Serious Crime Act 2015* (U.K.), 2015, c. 9, criminalizes "[c]ontrolling or coercive behaviour in an intimate or family relationship". In the family context in the U.K., the *Practice Direction 12J — Child Arrangements & Contact Orders: Domestic Abuse and Harm*, April 28, 2024 (online), at para. 3, defines "controlling behaviour" as "an act or pattern of acts designed to make a person subordinate and/or dependent" through

various means. Similarly, in Scotland, s. 2 of the *Domestic Abuse (Scotland) Act 2018* (asp 5), defines abusive behaviour to include violent and threatening conduct, but identifies among its effects "making [the victim] dependent on, or subordinate to, [the abuser]", "controlling, regulating or monitoring [the victim]'s day-to-day activities", and "depriving [the victim] of, or restricting [the victim's] freedom of action" (see, in particular, s. 2(3)).

[116] The U.K.'s emphasis on subordination, dependency, and deprivation of freedom suggests that abuse within intimate partnerships is ultimately about conduct that, when understood in its context, amounts to coercive control. This includes both a single act of violence and subtle events, such as surveillance, isolation, stalking, harassment or financial control, that are capable of subordinating a victim to their abuser (see P. McGorrery and M. McMahon, "Criminalising 'The Worst' Part: Operationalising the Offence of Coercive Control in England and Wales", [2019] *Crim. L.R.* 957, at pp. 962-63). For author Pahul Gupta, what the abuser seeks to accomplish is to dominate and control their intimate partner through a "strategy of intimidation, isolation, and control which infiltrates all aspects of their life, including their sexuality, material needs, work, and relationships with family and friends" (pp. 209-10, citing T. L. Kuennen, "Analyzing the Impact of Coercion on Domestic Violence Victims: *How Much is Too Much?*" (2007), 22 *Berkeley J. Gender L. & Just.* 2, at p. 2). As observed by Hayden J. in a leading English case on this issue, coercive control "really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key . . . is an appreciation of a 'pattern' or 'a series of acts', the impact of which must be assessed cumulatively and rarely in isolation" (*F. v. M.*, [2021] EWFC 4, at para. 4; see also *Re H-N and others (children) (domestic*

abuse: finding of fact hearings), [2021] EWCA Civ 448, [2022] 1 All E.R. 475, at paras. 29-31). Indeed, coercive control is not just isolated tortious incidents committed over time; it includes a course of conduct by one spouse to dominate the other in the relationship. Some of that conduct, viewed as an isolated incident, may not rise to the standards associated with existing torts, but it is no less effective as a pattern objectively tending to break the other spouse's will. Commenting on *F. v. M.* from a Canadian perspective, Professor Maur pointed out that "[t]he court took it as axiomatic that interfering with a victim's autonomy would be damaging. Alternatively, one can view the result as the court holding that damage to a victim's will is, in fact, 'serious'" ((2023), at p. 123).

[117] Pursuant to its distinct regime for extracontractual liability where intentional and unintentional conduct are largely treated together in the general law, courts in Quebec have long accepted that civil liability in intimate partnerships can arise from conduct understood not just as discrete acts of violence but as patterns of coercion and control. This experience, notwithstanding the differences in regimes for private law, is instructive for how coercive control might be recognized under the law of intentional tort elsewhere in Canada. Quebec courts characterize intimate partner violence as a range of conduct not limited to discrete acts of physical, sexual, or emotional abuse, but including subtler tactics such as financial control and isolation from family and friends (see, e.g., *K.M. v. Laplante*, 2025 QCCQ 280; *Droit de la famille — 24530*, 2024 QCCS 1429, at paras. 212-25; *Droit de la famille — 24915*, 2024 QCCA 767, at para. 51; E. Bernier, *La responsabilité extracontractuelle et le couple: Regards sur l'immixtion de la faute civile dans le contentieux conjugal*, 2024 (online)).

[118] Legal scholars have also defined intimate partner violence in terms of coercion that subordinates the victim and deprives them of their autonomy (see, e.g., E. Stark, *Re-presenting Battered Women: Coercive Control and the Defense of Liberty*, 2012 (online), at p. 7). While coercive control can result from discrete incidents of physical, sexual, or emotional abuse, it often goes beyond those mechanisms of control. Abusers may, for example, impede their partner's ability to acquire, use, or retain financial resources in order to undermine their security and long-term independence (Sowter and Koshan, at pp. 317-18). Studies have revealed that financial control is indeed a prevalent tactic used against victims of intimate partner violence (see Canadian Center for Women's Empowerment, *The State of Economic Abuse in Canada*, by M. Haileyesus and S. Goddard-Durant (2023); House of Commons Standing Committee on the Status of Women, at p. 13). Abusers can also take advantage of their partner's vulnerability (Sowter and Koshan, at p. 317; I.F., DisAbled Women's Network of Canada, at para. 7). These controlling tactics — described as [TRANSLATION] "chronic low-intensity violence" — may be subtle, invisible, individually unremarkable, and even non-criminal (E. Sheehy, "La preuve du contrôle coercitif peut-elle aider les femmes accusées d'homicide conjugal qui invoquent la légitime défense?", in S. Lapierre, I. Côté and M. Frenette, eds., *Contrôle coercitif: Lois, politiques et pratiques en matière de violence conjugale* (2025), 135, at p. 144), but are nonetheless harmful to their victim.

[119] Coercive and controlling conduct has been deemed "the most serious type of violence in the family law context" (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 p. 24; see also L. Langevin, “Violence conjugale coercitive et imprescriptibilité du recours en réparation du préjudice corporel: une interprétation libérale et remédiatrice de l’article 2926.1 C.c.Q.” (2023), 57 *R.J.T.U.M.* 455, at pp. 465-66 and 478-79; M. Lessard and M.-A. Plante, “Quand l’imprescriptibilité prend corps — la notion de préjudice corporel au regard des violences sexuelles, conjugales et infantiles” (2023), 53 *R.G.D.* 297, at pp. 321-23; Bala, Maur and Houston, at p. 69). This, in part, is due to an emerging recognition that coercive control is a risk factor of further acts of intimate partner violence and [TRANSLATION] “a predictor of femicides” (Sheehy, at p. 145; V. Allard et al., “Intimate Partner Violence Risk Assessment and Psycho-criminological Analysis: Development of the RBAC-VPI Risk Measure” (2025), 67:2 *C.J.C.C.J.* 1). Recent studies show that intimate partner violence goes frequently underreported by as much as 80 percent and, accordingly, legal action to redress the harm caused is often not undertaken by the victims (see D. M. Sowter, “Intimate Partner Violence and Ethical Lawyering: Not Just Special Rules for Family Law” (2024), 102 *Can. Bar Rev.* 130, at p. 135). Even when intimate partner violence is reported, law enforcement may fail to recognize psychological abuse — the most common form of abuse according to one Quebec study — as part of a broader strategy of coercive control (see, e.g., D. Gonzalez-Sicilia, “Le portrait de la violence entre partenaires intimes au Québec: la complémentarité entre les statistiques policières et les données d’enquête”, in Zoom santé, No. 71 (December 2025), at p. 14; C. Wiener, “Defining coercive control: Problems and possibilities”, in M. Burton et al., eds., *Research Handbook on Domestic Violence and Abuse* (2024), 9, at p. 22).

[120] Accordingly, and in order to properly characterize the wrongful conduct at the heart of this appeal, intimate partner violence, best understood, is not confined to conduct that inflicts physical or psychological injury, but includes all abusive conduct by which one intimate partner coerces and controls the other, thus depriving them of their autonomy. It includes incidents that are tortious in their own right, like physical, psychological, or sexual abuse, whether standing alone or as part of a broader pattern of more diffuse conduct (*Re H-N and others (children) (domestic abuse: finding of fact hearings)*, at para. 31). 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. The trial judge properly identified that the gap left by existing torts in addressing intimate partner violence was the "coercive and controlling behaviour" (para. 52).

[121] Violence between intimate partners must be distinguished from mere grievances or the hurtful and sometimes vengeful behaviour that can be part of high-conflict disputes. An intimate partnership may be dysfunctional or even intolerable, but that is not in itself tortious. Dishonesty, infidelity, emotional neglect, and disagreements may cause intimacy to break down but do not necessarily reflect controlling or coercive conduct. Indeed, it is not for tort law to prescribe harmonious relationships into being, but only to respond where the conduct of one party is fundamentally incompatible with the relationship, depriving the other of their right to dignity, equality, and autonomy.

[122] Furthermore, 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" (Bruckert and Law, at p. 134). In Canada, both police-reported and self-reported data indicate that victims of intimate partner violence are disproportionately women (Statistics Canada, "Trends in police-reported family violence and intimate partner violence in Canada, 2024", in The Daily, October 28, 2025 (online), at p. 2; Statistics Canada, *Intimate partner violence in Canada, 2018: An overview* (April 2021), at p. 3; Institut de la statistique du Québec, *Enquête québécoise sur la violence commise par des partenaires intimes 2021-2022: Méthodologie de l'enquête*, by L. Côté and N. Plante (December 2023)). While recognizing that it can arise in different intimate relationships, Professor Stark described coercive control as above all a "gender strategy" that "target[s] aspects of women's already devalued role in relationships" ((2023), at pp. 254 and 286).

[123] It is not enough to decry this violence as gendered without attention to how the disproportionate impact of intimate partner violence on women reflects the nature of the tortious conduct itself. Because this conduct is gender-based, it reveals not just the violation of gender-neutral norms protecting physical and psychological integrity, but conduct that causes distinct harm because it violates aspects of the right to dignity, autonomy, and equality to which women are entitled in their intimate partnerships.

[124] Some women face vulnerability in additional ways that aggravate their exposure to coercive control in intimate partnerships including, as interveners before us point out, Indigenous, racialized, and disabled women, as well as persons from sexual minority communities (see, e.g., I.F., Battered Women's Support Services Association, at para. 34.; I.F., DisAbled Women's Network of Canada, at para. 5; I.F., South Asian Legal Clinic of Ontario, South Asian Legal Clinic of British Columbia and South Asian Bar Association, at para. 10). Indigenous women, for instance, "are twice as likely to experience physical violence by an intimate partner than non-Indigenous women and four times more likely to experience intimate partner homicide" (Sowter and Koshan, at p. 315). They also disproportionately experience various forms of violence, some of which are specific to the Indigenous context (Snyder, Napoleon and Borrows, at pp. 600-602).

[125] In this case, the trial judge found that "[Ms. Ahluwalia] became more vulnerable and [Mr. Ahluwalia] more violent after immigrating to Canada" (para. 73), such that the isolation and dislocation heightened her dependence on him. This accords with research showing that immigrant women are particularly vulnerable to intimate partner violence, as they may lack familiarity with their new surroundings, thus increasing their likelihood of being economically dependent on their spouse (Bruckert and Law, at p. 140; see also C. Sheppard, "Women as Wives: Immigration Law and Domestic Violence" (2000), 26 *Queen's L.J.* 1, at pp. 5-7). In addition, immigrant women may be isolated from their support networks, and they may lack knowledge about, and access to, social services, making them less likely to report abuse (Bruckert and Law, at p. 140).

(c) *Intimate Partner Violence Interferes With Dignity, Autonomy, and Equality*

[126] Ms. Ahluwalia argues that intimate partner violence "destroys autonomy" and "eradicates dignity" (A.F., at para. 2). Similarly, a number of interveners say that intimate partner violence engages one's dignity, autonomy, and equality or frame the interests interfered with in the analogous language of "freedom", "liberty", "agency" and "independence" (see, e.g., I.F., Provincial Association of Transition Houses and Services of Saskatchewan ("PATHS"), at para. 26; I.F., Luke's Place Support and Resource Centre for Women and Children ("Luke's Place"), at para. 9; I.F., Barbra Schlifer Commemorative Clinic, at para. 18; I.F., Sandgate Women's Shelter of York Region, at para. 14; I.F., Registered Nurses' Association of Ontario, at para. 5).

[127] There is little doubt that intimate partner violence engages the victim's dignity, autonomy, and equality and interferes with their ability to make independent decisions about their lives and about themselves (J. Tolmie, R. Smith and D. Wilson, "Understanding Intimate Partner Violence: Why Coercive Control Requires a Social and Systemic Entrapment Framework" (2024), 30 *Violence Against Women* 54, at p. 56). By undermining a victim's autonomy, intimate partner violence erodes the equality of the relationship, which in turn results in the denial of the victim's dignity and inherent worth as a person who is entitled to equal respect within the relationship. Dignity, autonomy, and equality are notions whose legal significance is well established, and about which the jurisprudence has offered ample commentary; they are central to the emerging acceptance of coercive control as a distinct wrong. While Ms. Ahluwalia also claimed damages for emotional harm, as Professor Bayefsky explains, "[b]ecause dignitary harm is not identical to emotional harm, compensation

for emotional distress does not render superfluous compensation for dignitary harm" (*Dignity and Judicial Authority* (2024), at pp. 122-23). Other scholars have similarly recognized that the "loss of autonomy" is distinct from mental suffering (Maur (2023), at p. 110; see also M.-J. Maur, "Monetary Awards for Family Violence", in N. Bala et al., eds., *Understanding Family Violence in Family Court Proceedings: Providing Effective Responses for Victims, Children, and Perpetrators* (2025), 252, at p. 271; Sowter and Koshan, at pp. 331-32).

[128] In its most widely accepted definition, dignity refers to the respect that a person deserves because of their intrinsic worth as an individual. It is predicated on the view that everyone has equal value simply by virtue of being human (see M. C. Nussbaum, *Women and Human Development: The Capabilities Approach* (2000), at p. 243; D. G. Réaume, "Indignities: Making a Place for Dignity in Modern Legal Thought" (2002), 28 *Queen's L.J.* 61, at pp. 80-81; Sugarman and Boucher, at pp. 101-5; Bayefsky, at pp. 3-26; C. Brunelle, "La dignité dans la *Charte des droits et libertés de la personne*: de l'ubiquité à l'ambiguïté d'une notion fondamentale", [2006] *R. du B.* (numéro thématique) 143, at p. 168). In *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43, [2021] 3 S.C.R. 176, at para. 58, the Court interpreted dignity to mean "protection from the denial of [one's] worth as a human being", and held that "[w]here a person is stripped of their humanity by being subjected to treatment that debases, subjugates, objectifies, humiliates or degrades them, there is no question that their dignity is violated". Dignity requires respect for the "fundamental attributes" everyone equally possesses simply by virtue of being human (*Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211, at para. 105). The Court further affirmed

that human dignity is the "lodestar" that guides all *Charter* rights (*R. v. Kapp*, 2008 SCC 41, [2008] 2 S.C.R. 483, at para. 21; see also para. 22). As Martin J., then a professor of law, explained, "human dignity is a composite notion" (S. Martin, "Balancing Individual Rights to Equality and Social Goals" (2001), 80 *Can. Bar Rev.* 299, at p. 329). From that composite, the common law of torts recognizes different rights and interests worthy of legal protection (see K. S. Abraham and G. E. White, "The Puzzle of the Dignitary Torts" (2019), 104 *Cornell L. Rev.* 317; M. I. Hall, "Beyond the King's Peace: Direct Interferences With the Person as Tortious Interferences with Autonomy" (2024), 3 *S.C.L.R.* (3d) 153; Réaume, at pp. 64-65), thus reflecting how Canadian society believes one ought to be treated.

[129] The importance of autonomy to one's dignity is well established in the law. In *R. v. Morgentaler*, [1988] 1 S.C.R. 30, at p. 166, Wilson J., concurring, held that "an aspect of the respect for human dignity on which the *Charter* is founded is the right to make fundamental personal decisions without interference from the state". Likewise, scholars have connected interference with a person's autonomy with disregard for their moral worth, and thus with the violation of their dignity (Réaume, at pp. 84-85; see also Sugarman and Boucher, at p. 105). The right to make meaningful decisions about one's life is inseparable from one's equal standing in relation to others. A denial of autonomy is not only a failure to respect the individual's dignity — it is a mode of unequal treatment that denies their agency, voice, and status.

[130] This Court has consistently cited autonomy as an important interest protected by law (see, e.g., *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331, at para. 62; *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, at

para. 66). It has also provided clear guidance confirming the view that autonomy protects the ability to make fundamental choices. Discussing the "sphere of autonomy" protected by s. 5 of Quebec's *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12, the Court held that it includes "the right to take fundamentally personal decisions free from unjustified external interference" (*Godbout*, at para. 98). Moreover, the Court found that the right to liberty under s. 7 of the Canadian *Charter* protects "an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference" (para. 66; see also *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30, [2009] 2 S.C.R. 181, at para. 100, citing *Morgentaler*, at p. 166; *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, at para. 80; *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307, at para. 49; *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519, at pp. 587-88, per Sopinka J. for the majority).

[131] Transposed to the context of private relationships, autonomy refers to the capacity to make fundamental decisions in accordance with one's values, free from unjustified interference from others (see Nussbaum, at p. 101; see also G. Parchomovsky and A. Stein, "Autonomy" (2021), 71 *U.T.L.J.* 61, at pp. 62-63 and 65-66). Within a relationship of intimacy and interdependence, autonomy assumes a relational dimension: it is respected, or eroded, in the ways that one partner treats the other (see I.F., Attorney General of British Columbia, at para. 21). It calls on the notion that even when a person is a participant to an intimate partnership, they nonetheless retain their personhood and remain free to make their own choices in the pursuit of personal or shared goals and aspirations. It becomes possible only when mutual

recognition, freedom of choice, and respect for personal boundaries are maintained. 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. When established as a consequence of intentional conduct, that loss of autonomy is harm deserving of compensation.

[132] The deprivation of autonomy within intimate partnerships can flow from the accumulation of subtle acts that might not have the same effect in a different relationship. 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 (Maur (2023), at pp. 108-10; A. Pilliar, "Ahluwalia v Ahluwalia — Signalling Access or Closing a Door?" (2024), 75 *U.N.B.L.J.* 119, at p. 123). The victim's range of action is narrowed, leaving the victim subject to subordination that may persist without further intervention by the abuser (Maur (2023), at pp. 108-10; see also Stark (2023), at pp. 268-69). Intimate partner violence thus operates by undermining the victim's ability to make meaningful choices about their life. The erosion of the victim's autonomy in turn constitutes an affront to their dignity. It disregards their intrinsic worth as an individual, and fails to acknowledge them as equals worthy of respect within the intimate partnership. The wrong is not only the breach of autonomy or dignity in isolation, but the collapse of the shared normative

foundation — dignity, autonomy, and equality — on which intimate partnerships are meant to rest.

[133] Furthermore, recognizing in law that intimate partner violence interferes with one's dignity, autonomy, and equality ensures that the incremental development of the common law aligns with the Canadian *Charter*. Citing jurisprudence of this Court, including *Salituro* and *Nevsun*, Ms. Ahluwalia and several interveners recall that the common law of torts should develop in a manner consistent with *Charter* values (A.F., at para. 75; see also *Dolphin Delivery*, at pp. 602-3). Noting that intimate partner violence has a disproportionate impact on women, Ms. Ahluwalia argues that the development of a new tort should reflect the central premise of s. 15 of the *Charter* that guarantees equality to disadvantaged groups (see also S. Moreau, "Beyond Discrimination Law: Realizing Equality Through Other Laws, Such as Tort Law" (2024), 4 *Am. J.L. & Equal.* 427). The intervener WLEAF further submits that the values underpinning s. 7 of the *Charter* support the recognition of a new tort, as intimate partner violence interferes with an individual's liberty to make "'inherently private choices' that go to the 'core of what it means to enjoy individual dignity and independence'" (I.F., at para. 16, citing *Godbout*, at para. 66), as well as their physical and psychological security. The law — including private law — recognizes a woman's right to equality in intimate partnerships and when her partner acts to coerce and control her, that right — alongside other rights and interests — has been breached.

[134] The courts below were right to observe 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. In my respectful

view, what the Court of Appeal missed here, however, is that a pattern of this kind constitutes an entirely different wrong from what is captured by existing torts: a deprivation of autonomy, an unequal partnership, and an overall loss of dignity that persist well after each episode of abuse and which can permeate the victim's life even post-separation (Stark (2023), at pp. 15-16, 187-89 and 245). The House of Commons Standing Committee on the Status of Women's 2025 report on coercive control in Canada noted that "[c]oercive and controlling behaviour . . . is often misunderstood or is not immediately visible because the harmful effects are generally cumulative, caused by multiple acts occurring over time" (p. 11). Isolated events can be misconstrued as harmful like ordinary torts, rather than wrongs that also deprive autonomy. As Professor Stark explains, "[a]s long as courts view domestic violence as an 'event' or as a story divided into instances of brutality, they cannot understand battering as a deliberate course of criminal conduct, as a narrative of female subordination, or as a lived political reality" ("Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control" (1995), 58 *Alb. L. Rev.* 973, at p. 981; see also D. Kim, "Good Enough Isn't Good Enough: How the Court of Appeal for Ontario Failed to Recognize the Complex Dynamics of Family Violence in *Ahluwalia v Ahluwalia*" (2025), 83 *U.T. Fac. L. Rev.* 55, at pp. 73-74). That mischaracterization constrains the law's response. Victims seek to be restored not to the state they were in before each incident of abuse, but to the fuller state of safety, freedom, and equality that existed before the pattern began. Failure to recognize this broader harm undermines the compensatory function of tort law (p. 74).

[135] 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 (see Sowter and Koshan, at p. 331).

[136] Recognizing the harms to dignity, autonomy, and equality caused by coercive control as compensable accords with corrective justice, the central animating principle underlying tort law acknowledged by this Court (*Clements*, at para. 32; *Atlantic Lottery*, at para. 34; *Hall v. Hebert*, [1993] 2 S.C.R. 159, at pp. 200-201). This Court has said, among other objectives, that tort law imposes liability on one who causes harm to another by the "interference with a legally cognizable right" (*1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35, [2020] 3 S.C.R. 504, at para. 18). The new tort aligns fully with the corrective justice orientation of civil liability whereby compensation ordered by a court is designed to put the victim back into the same position they would have been in had the civil wrong, with its resulting harm, not been committed. Intimate partners must be able, vis-à-vis their partners, to live free from the coercive violence that wrongly deprives them of their dignity, autonomy and equality in the relationship. Damages awarded for the tort of intimate partner violence seek, insofar as they can, to correct that wrong and redress the harm suffered by the victim as a consequence, and no more.

[137] It strikes me as plain that where an intimate partner has been deprived of their ability to live free of coercion, as an equal to their spouse, the victim has not just suffered a loss deserving of compensation, but they have been the victim of a civil

wrong in that their right to be treated with dignity, and as an autonomous equal in the relationship, has been violated. The conduct may, of course, also be seen as violating a right to the person's physical and psychological integrity. But specific to intimate partnerships, as discussed previously, courts have sometimes characterized the relationship as engaging mutually held rights for the partners arising from the intimate nature of the bond. In *Moge v. Moge*, [1992] 3 S.C.R. 813, L'Heureux-Dubé J. described marriage as a "joint endeavour" which "serves vital personal interests, and may be linked to building a 'comprehensive sense of personhood'" (pp. 848 and 870). This interdependence arises not from the legal form of the relationship but in its nature as a "forum for intimacy" (p. 848; see also *Miron v. Trudel*, [1995] 2 S.C.R. 418, at para. 100). In *Quebec (Attorney General) v. A*, 2013 SCC 5, [2013] 1 S.C.R. 61, LeBel J. explained that the Quebec regime for equal effects of marriage created "mutual rights, duties and obligations for the spouses" (para. 84). Whether tort liability turns on legally cognizable "rights", a point on which some disagree (see, e.g., accounts of R. Stevens, *Torts and Rights* (2007), at p. 2; A. Botterell, "Rights, Loss and Compensation in the Law of Torts" (2015), 69 *S.C.L.R.* (2d) 135, at p. 141; P. Cane, *Key Ideas in Tort Law* (2017), at p. 17; J. Goudkamp and J. Murphy, "The Failure of Universal Theories of Tort Law" (2015), 21 *Legal Theory* 47, at p. 59; N. J. McBride, "Rights and the Basis of Tort Law", in D. Nolan and A. Robertson, eds., *Rights and Private Law* (2012), 331, at p. 331), this Court recognizes that the law protects individuals from tortious interference with dignity, autonomy, and equality in the intimate partnership. The law endeavours, insofar as possible, to correct the wrong by an award of damages that places the plaintiff back in their original position.

[138] Accordingly, from the perspective of corrective justice, private law has fallen short in providing adequate compensation for intimate partner violence in two ways. First, by failing to properly identify the wrong, courts have overlooked the tortious conduct deserving of redress. This represents a gap in the existing law that justifies the creation of a new tort of intimate partner violence. Second, even where the wrong is identified as falling within the scope of existing torts, courts often award damages that are insufficient to redress it. This reflects a failure to account for the fact that harm in the intimate partner setting may be far more severe than between strangers. While this second shortcoming requires a new attitude to awarding damages for wrongs recognized under existing torts, it does not, by itself, justify the creation of a new tort, as Benotto J.A. observed (C.A. reasons, at para. 52).

(2) Adequacy of Existing Torts

[139] Ms. Ahluwalia asks the Court to recognize a new tort of family violence to remedy the wrongful conduct she has endured at the hands of Mr. Ahluwalia during the course of their marriage. While he does not deny the allegations as to his conduct, Mr. Ahluwalia answers that a novel tort should not be recognized in this instance because existing torts — including assault, battery, and IIED — are adequate to provide relief to Ms. Ahluwalia. Mr. Ahluwalia's submission rests on the assumption that the only legal interest engaged by his conduct is Ms. Ahluwalia's bodily and psychological integrity, such that the only harm arising from his conduct are physical and psychological injuries. This view fails to respond to intimate partner violence in its full scope.

(a) *The Existing Torts Fail to Remedy the Specific Wrong to Dignity, Autonomy, and Equality That Intimate Partner Violence Creates*

[140] 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. While certain existing torts may capture discrete incidents — or even patterns — of interference with one's physical, psychological, or emotional integrity, they do not account for the wider and qualitatively different consequences of coercive control in intimate partnerships brought about by single acts of violence or by patterns of conduct over time.

[141] One may argue that, even though the victim's subordination is offensive to their autonomy, it will nevertheless always correlate with, and emerge out of, physical and emotional incidents of wrongful conduct within the scope of battery, assault, and IIED. On this reasoning, a new tort is not necessary: by remedying the physical and emotional incidents of intimate partner violence, the deeper subordination that erodes dignity, autonomy, and equality, while a distinct harm, can nevertheless also be remedied as connected to those incidents. The aggravating effect of this violence between intimate partners as opposed to strangers could, on this view, be attended to through higher damage awards.

[142] I disagree. Indeed, on the facts here, Mr. Ahluwalia's coercive behaviour towards Ms. Ahluwalia was broader in scope than physical and emotional abuse. Rather, it was the cumulative effect of multiple forms of controlling conduct that rendered Ms. Ahluwalia subordinate to Mr. Ahluwalia. The trial judge accepted that Ms. Ahluwalia "was completely subservient to [Mr. Ahluwalia's] needs" (para. 75). While the deprivation of Ms. Ahluwalia's autonomy did relate in part to Mr. Ahluwalia's physical and emotional abuse, not all of it did. Separately, the trial judge found that Mr. Ahluwalia also used financial means to control Ms. Ahluwalia. He collected her earnings, monitored her spending and, upon separation, terminated her credit card and closed their joint bank accounts, both of which Ms. Ahluwalia used to cover her and her children's basic needs (paras. 108-10). None of those instances of economic control transpired physically, nor was their design simply to cause her distress. Rather, Mr. Ahluwalia exercised a controlling hold over Ms. Ahluwalia financially and capitalized on her vulnerability as an immigrant woman in a new country by isolating her from others. Ms. Ahluwalia did not have access to extended family members who could "support her, financially or socially, if she left the relationship" (para. 75). The trial judge held that, because of her social positioning, Ms. Ahluwalia was "financially dependent on [Mr. Ahluwalia]" (para. 73).

[143] At the heart of intimate partner violence is a wrongful interference not just with physical or psychological integrity, as with the established torts, but with an intimate partner's autonomy, rendering the victim unequal in the partnership. This is a qualitatively distinct harm from that caused, for example, by other forms of trespass to the person. The wrongful conduct interfering with autonomy may partly overlap with conduct that interferes with one's bodily or psychological integrity. Abusive conduct

often includes, as this case demonstrates, physical or emotional violence but extends beyond it. Individual incidents of physical abuse cause harm, as they would to anyone, but within an intimate partnership they also serve to subordinate the partner.

[144] Existing torts, whether separately or together, cannot remedy the full scope of the injury inflicted by intimate partner violence, specifically the coercive conduct at issue here. Although these torts capture conduct that may, in part, overlap with intimate partner violence, plaintiffs must adduce evidence of the abuse they experienced to fit into these existing legal categories only to obtain an incomplete remedy. This approach inevitably leaves aspects of the wrong and the injury unaddressed. Forcing facts into the strict confines of existing torts is both out of step with the incremental development of tort law and does not advance access to justice for victims of intimate partner violence.

(b) *Existing Torts, Including Battery and Assault, Are Often Episodic in Nature and Cannot Capture the Interference to the Victim's Autonomy*

[145] On its own, the tort of battery does not capture modes of coercion in intimate partnerships. Damages for battery compensate for the harm caused as a result of the interference with one's physical or psychological integrity. To the extent it is conceived as protecting an individual's right to personal autonomy, the tort of battery is restricted to the protection of one's *physical* autonomy, not as an interest pertaining more generally to one's agency and freedom to make one's own decisions within an intimate partnership. In this case, the trial judge correctly found that Mr. Ahluwalia's liability encompassed three incidents of physical violence against Ms. Ahluwalia in 2000, 2008, and 2013. Serious as they were, however, these incidents represent but a

small share of the wrongful conduct at issue. The three incidents of violence, exacted during the intimate partnership, did not simply cause Ms. Ahluwalia physical or emotional harm. They served to coerce and control Ms. Ahluwalia both as discrete incidents and, as the trial judge found, as part of a broader pattern of misconduct over the life of the marriage. The trial judge was satisfied that Ms. Ahluwalia had proven that these acts contributed to subordinating her to her husband's will during the marriage by depriving her of her autonomy and equal place in the relationship. Recognizing these acts as battery provides Ms. Ahluwalia with damages for the physical and emotional harm suffered, but it would be inadequate to compensate her for the distinct wrong associated with the coercive conduct that resulted in the loss of dignity, autonomy, and equality as an intimate partner.

[146] Similarly, the Court of Appeal's reasons suggest that the harm caused by intimate partner violence is partly compensable under the tort of assault. In making this finding, the court observed that Mr. Ahluwalia's violence led Ms. Ahluwalia to exist in a "near-constant fear of imminent harm" (para. 67). This, the court held, amounted to tortious assault. But in doing so, the Court of Appeal extended the tort of assault beyond its ordinary core logic. Assault is an intentional act that causes one to reasonably apprehend imminent harmful physical contact, which interferes with one's psychological integrity and security (*M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6, at p. 25; *Barker v. Barker (Litigation Guardian of)*, 2022 ONCA 567, 162 O.R. (3d) 337, at para. 138; A. M. Linden et al., *Canadian Tort Law* (13th ed. 2025), at §2.04[2]). Imminence is a critical component of the tort of assault that, by definition, constrains it to discrete incidents causing emotional harm. The tort of assault cannot capture the many forms that intimate partner violence can take — such as manipulation, isolation,

or financial abuse — which do not necessarily arouse a fear of imminent contact, and whose cumulative coercive effects over its victim only appear over time.

[147] Coercive control creates a generalized fear of *future* harm — "a terror of something that might happen, rather than the fear of something specific", as one scholar describes (Wiener, at p. 13). This is different from fear of *imminent* harm (*Barker*, at para. 172). While previous patterns of interaction can inform one's apprehension of physical contact, that the contact be thought to be *imminent* remains one of the essential ingredients of the established tort of assault (Linden et al., at §2.04[2]). There is no question that Ms. Ahluwalia's fear of possible harm from Mr. Ahluwalia is injurious and ought to be remedied. The issue, however, is whether that fear satisfies the requirements of assault as doctrinally construed. For that to be the case, Ms. Ahluwalia would have had to apprehend imminent harm on a constant, not merely near-constant, basis. The facts in this case do not allow for such an inference. Ms. Ahluwalia clearly apprehended imminent harm at certain points in the relationship, but there is nothing to suggest it was perpetual and constant. In fact, Mr. Ahluwalia and Ms. Ahluwalia were not always in each other's presence. The parties spent long periods of time away from each other, and Ms. Ahluwalia could not have apprehended imminent physical harm during that time. The importance of the threats was not in the imminent harm, but in their controlling and subordinating effect on her over time.

[148] The present case is distinguishable from *Scalera*. There, a majority of this Court declined to recognize a tort of sexual assault with distinct elements from the general tort of battery. McLachlin J.'s observation that "[t]he sexual aspects of the claim go only to damages" was not a dismissal of the seriousness of sexual assault or

of the possibility that sexual torts may differ from other forms of interference with the person (para. 27). In fact, the Court acknowledged that “a new tort of sexual battery with different rules from ordinary battery could be recognized in an appropriate case” (*ibid.*). The parties in *Scalera* did not ask the Court to recognize a new tort — and McLachlin J. took care to leave that possibility open — but rather to determine which party bore the burden of proving consent. Moreover, the facts in *Scalera* — the sexual assault of an adolescent girl by five bus drivers — did not come about in an intimate partnership. With respect, I would not follow the Court of Appeal’s reliance on *Scalera* in this case for the conclusion that no new tort of family violence is necessary. A greater quantum of damages redresses a harm that is more severe, rather than harm that is distinct in nature, as is the case here: intimate partner violence is a distinct civil wrong resting in the coercive and controlling character of the tortious conduct. Properly understood, *Scalera* does not address, let alone resolve, the question before the Court in this appeal.

[149] The physical and psychological injury resulting from incidents of battery and assault remain distinct from the victim’s subordination in the relationship to which they contributed. Existing torts do not recognize the equality norm that is transgressed when coercive conduct is the core misconduct in an intimate partnership, and where subordination is the core injury. It is not just that the physical and psychological injury is aggravated by the intimate partnership setting; the injury is qualitatively different *because of* the intimate partnership setting. While damages may be awarded to compensate for emotional harm arising from battery and assault, that harm is a result of specific incidents, rather than the “generali[z]ed fear” that characterizes the state of subordination (Wiener, at p. 13). As Professor Stark explained, the focus is less on

“what men do to women” than on “what it keeps women from doing for themselves” (“Commentary on Johnson’s ‘Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence’” (2006), 12 *Violence Against Women* 1019, at p. 1023).

[150] The torts of battery and assault are incapable of capturing the wrong arising from the interference with Ms. Ahluwalia’s autonomy. The question now becomes whether that gap can be filled by the tort of IIED, as suggested by the Court of Appeal.

(c) *The Tort of IIED Is Constrained to Emotional Harm and Does Not Encompass the Deprivation of Autonomy*

[151] Canadian courts have imposed liability for IIED where there is (1) flagrant or outrageous conduct that is (2) calculated to produce harm and which (3) results in a visible and provable illness (see, e.g., *Prinzo v. Baycrest Centre for Geriatric Care* (2002), 60 O.R. (3d) 474 (C.A.), at para. 48).

[152] The adequacy of the tort of IIED turns in part on its ability to remedy a flagrant or outrageous pattern of conduct, including the treatment of a series of discrete events as a single and ongoing tortious act that unfolds over a period of time. The trial judge held that the tort of IIED is constrained to discrete incidents and that it requires “showing that a specific interaction or behaviour was ‘flagrant and outrageous’ and resulted in injury” (para. 54). Therefore, she decided, the pattern of abuse was left unanswered. The Court of Appeal disagreed and held that, where the facts call for it, the tort of IIED can consolidate discrete events into one continuous pattern that is flagrant or outrageous (para. 107).

[153] The adequacy of IIED to address Ms. Ahluwalia's claim turns on two distinct questions that should not be conflated. The issue is both whether the tort of IIED is capable of capturing the full scope of wrongful conduct in this case and whether it can remedy the distinct harm that erodes Ms. Ahluwalia's autonomy and which does not fully coincide with emotional distress.

[154] IIED can do neither. First, the tort addresses "flagrant or outrageous" conduct, focusing on injury caused to one's psychological integrity. The requirements of IIED, while they may well extend to patterns of action, focus on conduct that meets the high bar of flagrant or outrageous conduct. The interveners West Coast Legal Education and Action Fund Association ("WCLEAF") and Rise Women's Legal Centre ("RWLC") explain that in an intimate partnership, "[t]he higher threshold" of tortious conduct required to establish IIED will fail to capture the "coercive control or chronic belittling" unless it is understood to be "extreme or exceptional" (I.F., at para. 28). Scholars have observed that the recurrent forms of abuse indicative of coercive control in intimate partnerships are often "frequent, recurrent, and low-level actions" rather than the extreme conduct associated with "flagrant and outrageous conduct" (Gupta, at pp. 220-21, citing Pilliar, at p. 134).

[155] Second, given the focus on psychological integrity, the tort remedies harms that are emotional and psychological in nature. To make out liability under the tort of IIED, a victim of intimate partner violence must prove they suffer from a visible and provable illness that is "serious and prolonged and rise[s] above the ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept" (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2

S.C.R. 114, at para. 9; see also *Saadati v. Moorhead*, 2017 SCC 28, [2017] 1 S.C.R. 543, at para. 37; *McLean v. McLean*, 2019 SKCA 15, at para. 77). Absent proof of visible symptoms of emotional distress, a plaintiff will be unable to establish one of the three essential ingredients of the tort of IIED, and will find themselves without remedy. The tort of IIED is therefore ill-suited for methods of coercion that do not produce a visible and provable psychological illness. Take the example of economic abuse, a prevalent form of intimate partner violence, which was "a central focus" of the trial judge's analysis, as the intervener Sandgate Women's Shelter of York Region observed (I.F., at para. 17). The Court of Appeal went on to state that "[t]he existing torts are flexible enough to address the fact that abuse has many forms", including financial abuse (para. 92). It is true that financial abuse by one partner can cause psychological distress to the other. However, the importance of financial abuse here is as a technique to coerce and control the partner, a consideration that cannot be said to "fall squarely" within the existing torts, including IIED (para. 91). As scholars Sowter and Koshan wrote, "[e]conomic abuse involves the abuser impeding the survivor's ability to acquire, use, and maintain economic resources, which in turn threatens the survivor's economic security, self-sufficiency, and autonomy" (pp. 317-18).

[156] The common law of torts would indeed be sorely deficient if it required that the abusive deprivation of an intimate partner's autonomy first coincide with physical or emotional harm before it becomes tortious and thus compensable. Similarly, in *Caplan*, the Ontario Superior Court found that the plaintiffs could not demonstrate visible and provable illnesses despite demonstrably being victims of "extraordinary campaigns of malicious harassment and defamation carried out unchecked, for many years, as unlawful acts of reprisal" (para. 1). The court held that the tort of IIED was

inadequate because it could not come to the aid of the plaintiff where the facts cried out for a remedy: "The law would be . . . deficient if it did not provide an efficient remedy until the consequences of this wrongful conduct caused visible and provable illness" (para. 170). Transposed to this case, the IIED requirement of visible and provable illness would risk treating the deprivation of an intimate partner's autonomy in all cases of coercive control as insufficient, unless and until it overlapped with harm to one's bodily and psychological integrity. This, in turn, would result in the victim's loss of freedom — a most egregious harm — going unremedied.

[157] If interference with one's interests in dignity, autonomy, and equality cannot be reduced to emotional distress, should the third element of the tort of IIED be expanded to encapsulate it? While the applicability of a tort to given facts should not be inflexible, this change would alter the tort of IIED beyond its doctrinal core, bringing within its purview harm which it was not designed to answer. This could well have consequences for the tort's other elements. IIED's first element requires the plaintiff to demonstrate flagrancy or outrageousness because discerning the plaintiff's mental and emotional state under the third element is a difficult endeavour. The flagrant or outrageous requirement serves as a counterweight that "guarantee[s] that the distress suffered is genuine" (Réaume, at p. 76). This balance may fit emotional injuries which flow from flagrant conduct, but does not apply easily to the deprivation of autonomy, where the subordination is far more sensitive to, and dependent on, the intimate partnership that links the plaintiff to the defendant. Extending the tort of IIED beyond emotional harm in order to accommodate interference with dignity, autonomy, and equality would require a fundamental realignment of its elements, breaking sharply with the caselaw and generating uncertainty (Goudkamp, at p. 54).

[158] Aside from this uncertainty, the operation of limitation periods in intimate partner violence further illustrates the inadequacy of existing torts. In Ontario, no limitation period applies to civil claims for an "assault" arising from an intimate relationship (*Limitations Act, 2002*, s. 16(1)(h.2)(i)). But not all coercive conduct within an intimate partnership will meet the legal definition of assault. If the physical assault is actionable, but the years of surveillance, threats, isolation or economic coercion that preceded it are time-barred or treated as background, the legal response fails to account for the cumulative nature of the abuse (see, e.g., *Colenutt v. Colenutt*, 2023 ABKB 562, 95 R.F.L. (8th) 176). As the intervener Luke's Place submits, victims face real access to justice barriers when limitation periods track only certain forms of abuse (I.F., at paras. 19-20). Under the new tort, coercive intimate partner violence should be understood as a continuing injury (see generally *Roberts v. City of Portage La Prairie*, [1971] S.C.R. 481, at pp. 491-92). I acknowledge, however, that the recognition of a new tort may not, on its own, resolve the issues arising from the operation of limitation statutes. Extending existing exemptions from limitation periods to the new tort may require legislative action, as was done for civil claims of assault or battery arising from intimate partnerships (Sowter and Koshan, at p. 334).

[159] Intentional conduct may amount to acts of physical violence viewed discretely or, as in Ms. Ahluwalia's case, a part of a pattern of conduct. But where that conduct objectively amounts to domination of the intimate partner, part of the wrong and its resulting harm fall outside of the parameters of existing torts. Assault requires imminent contact of a harmful or offensive nature; battery depends on actual physical contact by the tortfeasor; and IIED seeks out conduct that is so outrageous as to cause an illness. Other torts may capture other discrete aspects of physical and psychological

violence, but obscure the harm to the victim's autonomy. The tort of false imprisonment, for instance, addresses interference with one's interest in freedom from physical restraint (Linden et al., at §2.04[3]), but it is ill-suited to remedy the deprivation of autonomy caused by coercive control, where the intimate partner's freedom of movement may not be overtly restricted. Similarly, the tort of intrusion upon seclusion recognized by Sharpe J.A. in *Jones* may capture the acts of stalking and surveillance, but it cannot address the specific injury caused by the broader strategy of abuse that characterizes intimate partner violence, of which such acts may form only one component. "None of these torts", says the intervener Registered Nurses' Association of Ontario, "provide redress for harm threatened in the indeterminate future" (I.F., at para. 12 (emphasis deleted)). Controlling a spouse's time, money, appearance, access to friends, or religious practices can be designed to establish dominance in the relationship over the long term. There is a further danger — which the interveners WCLEAF and RWLC call a myth and stereotype for family law — that where intimate partner violence falls short of physical assaults or egregious psychological attacks, the conduct is insufficiently serious to attract a remedy, as if the harm associated with manipulative and controlling behaviour is only the "normal, if undesirable, consequence of relationship breakdown" (I.F., at para. 29). I agree with the view that ignoring the tortious character of coercive and controlling behaviour in an intimate partnership because it does not fit the requirements of existing torts overlooks, by reason of these stereotypes, the sometimes "less spectacular forms of violence that are integral to [intimate partner violence's] grinding nature" (I.F., at para. 30).

[160] Ms. Ahluwalia comes before the Court having proven that she experienced an array of abusive coercive tactics at the hands of her husband, whose actions interfered with her autonomy, rendered her an unequal partner, and undermined her dignity. Battery, assault, IIED, or other torts may respond to Ms. Ahluwalia's injuries insofar as they flow from interference with her bodily and psychological integrity, but they are incapable of addressing the interference with her autonomy that arises from the cumulative effect of the physical and non-physical modes of coercion to which she has been subjected over the course of the marriage. Existing torts, even when taken together, are not wide enough to capture the full nature and scope of the wrongful conduct of intimate partner violence because coercive control is not "merely an aggravated form of committing an extant [wrong]" (Goudkamp, at p. 64). The Court of Appeal was correct to say that "[e]xisting torts already address patterns of behaviour" (para. 60). However, with great respect, by focusing on the acts that do fit under existing torts, the Court of Appeal failed to recognize the qualitatively different nature of coercive control that gives rise to a distinct harm. The existing torts are inadequate to respond to Ms. Ahluwalia's claim.

(d) *Family Law Jurisprudence Involving Tort Claims for Intimate Partner Violence Confirms the Limitations of Existing Torts*

[161] Family law jurisprudence involving claims for intimate partner violence underscores that existing torts do not capture coercive control in intimate partnerships as a distinct form of wrongful conduct, giving rise to a harm that is itself qualitatively different in nature. Tort law in its present state compels victims to fit their claims within existing torts. This approach risks leaving critical dimensions of the intimate partner violence they experienced unaddressed.

[162] The Court of Appeal emphasized that the high quantum of damages awarded by the trial judge in this case "reflects an emerging understanding of the evils of intimate partner violence and its harms" (para. 128). It canvassed family law jurisprudence and observed that courts have regularly awarded damages on the basis of existing torts that are capable of recognizing "patterns of physical and emotional abuse" as "tortious behaviour" (para. 74). Mr. Ahluwalia agrees, adding that the increase in damages awarded by lower courts across Canada following the Court of Appeal's decision in this case accords with that court's guidance "that damage awards should reflect society's abhorrence towards intimate partner violence" (R.F., at para. 62; see also para. 63). Accordingly, he says, a new tort is unnecessary because "[s]ignificant damage awards for intimate partner violence are now the norm" (para. 63).

[163] While these recent developments do signal a welcome trend towards the award of higher damages for conduct associated with intimate partner violence, the continued reliance on existing torts remains inadequate for addressing the harms caused by this conduct. The intervener Luke's Place submits that "far from demonstrating the adequacy of existing torts, the exceptional nature of the cases . . . actually make the opposite point: remedies that are only accessible in ideal circumstances are not an adequate remedial tort response" (I.F., at para. 27). I agree. The Court of Appeal also suggested that "the quantum of damages historically awarded may need to evolve to better reflect the current societal understanding of the extent of these harms" arising from intimate partner violence (para. 128). With respect, if the underlying civil wrong has not been properly identified, increased damages cannot provide proper redress to the victim of intimate partner violence.

[164] Cases decided after the judgment of the Court of Appeal illustrate how courts' continued reliance on existing torts fails to account for the full range of conduct associated with coercive control. In *Barreto*, the plaintiff had pleaded that the defendant's financial control over her during the marriage and after separation was tortious. It was nonetheless held that the tort of IIED had not been made out in terms of financial control because the trial judge was "not satisfied that the alleged financially coercive acts were flagrant and outrageous or caused a visible and provable injury" (para. 330). Although the plaintiff received damages for other tortious conduct, "coercive financial control" was left unredressed as it did not fit neatly within the confines of existing torts (para. 157). In *C.S.K. v. P.K.*, 2025 BCSC 1728, the plaintiff limited her claim to the tort of battery because the status of the tort of family violence was uncertain. The damage award, therefore, only accounted for four specific incidents of physical assault (at para. 55), leaving largely unaddressed the impact of the defendant's abusive conduct on the plaintiff's capacity to live her life freely over the two decades of marriage. While the plaintiff received aggravated damages, they were awarded specifically for "the devastating impact" of one particular incident of physical abuse that left her permanently disabled (para. 376).

[165] Aggravated damages provide no answer to coercive control as a distinct wrong. The "breach of trust" associated with coercive intimate partner violence is not merely an aggravation of physical or psychological harm (see, e.g., *Montgomery*, at para. 35; *Shaw*, at para. 111). As the intervener PATHS submits, where aggravated or punitive damages are awarded on the basis of existing torts, "these remedies still presume the underlying cause of action addresses the harm caused" (para. 25). They disregard the harm that "renders one subordinate to their abuser and that, in extreme

cases, 'corrode[s] their sense of personal autonomy' and prevents a person from being themself" (I.F., at para. 26, citing *F. v. M.*, at para. 4; see also I.F., Attorney General of British Columbia, at para. 21).

[166] Furthermore, a review of family law cases involving intimate partner violence reveals a continuing uncertainty regarding the proper basis for tort damages. On the one hand, some courts have simply awarded general compensatory damages based on existing torts (see, e.g., *Wang v. Li*, 2024 ONSC 2352, at para. 132, awarding $75,000 in compensation, with no discussion of aggravated damages). On the other hand, some have treated violence in the intimate partnership context as an aggravating factor under existing torts to award aggravated damages (see, e.g., *Pichie v. Pichie*, 2024 ONSC 2868, at paras. 29-33, awarding $25,000 in aggravated damages, in addition to $75,000 in general damages for physical, psychological, and emotional injuries). In yet other cases, the apportionment between general and aggravated damages is left unspecified, resulting in a single award encompassing both heads of damages (see, e.g., *Mikhail v. Mikhail*, 2024 ONSC 4427, at para. 37, awarding $100,000 in "aggravated and compensatory damages"). The inconsistent assessment of damages in part stems from the failure to identify the precise wrong — coercive control — because existing torts fail to capture it.

[167] Outside of Ontario, the Court of Appeal's decision also appears to have carried significant persuasive weight, similarly shaping judicial responses to intimate partner violence through existing torts. A recent case from British Columbia illustrates the barriers that victims continue to face in making out their claims. In that case, the judge granted general compensatory damages in the amount of only $10,000 for a

single incident of sexual battery, refusing to make a finding of liability for battery and assault based on allegations of "a pattern of verbal and emotional abuse" over the 16-year relationship because the husband's behaviour "did not rise to the level of being tortious" (*Hammond v. Holtz*, 2024 BCSC 447, at paras. 87 and 94; see also paras. 95-96, 104, 110 and 116).

[168] Although tort law in its current form can provide some redress for victims of intimate partner violence where the material facts pleaded satisfy the varying requirements of existing torts, it nonetheless imposes considerable barriers, particularly for victims who experience coercive control through conduct that is not fully captured by existing torts (Maur (2023), at pp. 125-26; see also Mosher, at pp. 153-57). Recognizing the tort of intimate partner violence is not a matter of symbolism, labels, semantics, or simply an issue of a low quantum of damages awarded by the courts. It is an incremental response that appropriately addresses victims' dignity, autonomy, and equality — interests that this Court has consistently upheld — thereby allowing courts to provide a proper remedy for intimate partner violence in Canada.

(3) Assessing the Proposed Tort

[169] The analysis that was undertaken above has sought to demonstrate the need and justification for a new tort as part of the proper development of the common law, in the face of pressing social concern to which existing torts have proved insufficiently responsive. Intimate partner violence is wrongful conduct that infringes upon one's dignity, autonomy, and equality. Yet, existing torts are ill-suited to account for the full range of conduct that can subordinate a victim, and ill-suited to remedy the injury to one's dignity, autonomy, and equality. This conclusion does not, however, exhaust the

inquiry before this Court. A novel tort must not only be necessary; it must also offer a proper response to the need that was identified. It is to this question that the following paragraphs now turn.

(a) *The Trial Judge's Tort of Family Violence*

[170] Having concluded that existing remedies were inadequate to respond to the harm suffered by Ms. Ahluwalia, the trial judge recognized the tort of family violence. Under this tort as described by the trial judge, the plaintiff must prove that the defendant family member engaged in conduct in the context of the family relationship that "(1) is violent or threatening, *or* (2) constitutes a pattern of coercive and controlling behaviour, *or* (3) causes the plaintiff to fear for their own safety or that of another person" (para. 52 (emphasis in original)). The trial judge explained that, under the first "mode of liability", the plaintiff must establish that the defendant intended to engage in violent or threatening conduct (para. 53). Under the second mode, the defendant must be shown to have engaged in behaviour calculated to be coercive and controlling. And under the third mode, the plaintiff must establish that the defendant must have known with substantial certainty that their conduct would cause the plaintiff's subjective fear.

[171] Ms. Ahluwalia urges this Court to adopt the tort as articulated by the trial judge. She states that the tort of family violence is necessary to address the "cumulative and compounding" nature of intimate partner violence that existing torts fail to consider (A.F., at para. 47). She adds that the tort of family violence provides victims of intimate partner violence with a single vehicle with which they can bring "all of the harms and claims in one proceeding" (para. 59). This would make it easier for abusers to be held liable for their wrongful conduct. Recognition of the tort of family violence would

therefore be consistent with the *Charter* values broadly, access to justice, and substantive equality (para. 72). It would also align the common law with recent legislative developments and public expectations (para. 69). Mr. Ahluwalia, conversely, argues that if the Court were to conclude that existing remedies are inadequate, the tort of family violence as articulated by the trial judge should not be recognized. He submits that it is too broad and indeterminate. It is neither restricted to individuals in an intimate partnership, nor does it require proof of harm.

[172] Most respectfully, I agree that the tort of family violence as cast by the trial judge is imprecise. If her three modes of liability represent freestanding causes of action, then the first and third modes do little more than duplicate the existing torts of battery, assault, and IIED arising in intimate partnerships. Indeed, her reasons explicitly state that the first mode of liability is "consistent with the well-recognized intentional torts of assault and battery", whereas the third mode is "consistent with battery, and/or intentional infliction of emotional distress" (para. 53). It is unclear, then, what gap in the law those two freestanding modes of liability seek to fill. The first and third modes of liability are unnecessary, or could be addressed simply through higher damage awards to reflect the aggravating context of intimate partnerships. These modes do not, as such, reflect the inadequacy of existing remedies or identify a gap in the common law, which, as we know, does not develop in the absence of necessity (*Salituro*, at pp. 666 and 670; *Friedmann Equity*, at para. 42; see also *Watkins*, at pp. 760-61).

[173] Furthermore, the tort of family violence would impose liability on family members broadly, not just intimate partners. The wrongful conduct that the parties put before the trial judge relates specifically to intimate partnerships, not all family

relationships. The broad definition employed by the trial judge would come at the expense of an understanding of the tortious conduct that reflects the particular relational dynamic between intimate partners raised by Ms. Ahluwalia in her proceedings. I take most seriously the idea, advanced by intervener Justice for Children and Youth, that parents who are violent with their children may, in some circumstances, be held to account in tort law, and the harm children experience is not merely incidental to intimate partner violence. But like the intervener, I see this abuse as preying on the particular vulnerability of children who are uniquely and distinctly harmed by family violence. For the present appeal, it is best to note that dependencies elsewhere in the family may give rise to a comparable kind of vulnerability experienced by Ms. Ahluwalia, but that the unique character of coercive control between intimate partners is deserving, on these facts, of recognition on its own. Intimate partnerships are predicated on a different intimacy, and a different idea of the family bond, from non-conjugal relationships between other family members. I would leave consideration of the impact of family violence on other family members to another day. On the present pleadings and evidence adduced by Ms. Ahluwalia, it would be mistaken to design a tort that sought to cover all instances of violence among family members, going well beyond intimate partnerships.

[174] In sum, the tort of family violence does not accurately respond to the wrongful conduct at issue and the harm it causes. The trial judge did not fall into error simply by recognizing a new tort. She most certainly had "the capacity to move the law in a different direction" where established precedent did not provide an appropriate remedy for the material facts made out before her (Sharpe, at p. 94). But, with respect, the tort she described is not sufficiently tailored to respond to the facts pleaded by Ms.

Ahluwalia and to remedy the interference with dignity, autonomy, and equality arising from intimate partner violence, and is cast too broadly, since it includes relationships outside of intimate partnerships. I would however, in part on the strength of the trial judge's second mode of liability that identifies coercive control as the gap in the existing law, recognize a new tort of intimate partner violence.

(b) *The Tort of Coercive Control Before the Court of Appeal*

[175] While the recognition of the tort of family violence proposed by the trial judge and endorsed by Ms. Ahluwalia would not constitute a sound and principled development of the law of torts, Ms. Ahluwalia advanced an alternative tort of coercive control before the Court of Appeal. Ms. Ahluwalia has since abandoned this submission at this Court. Nevertheless, many interveners focused their submissions helpfully on "coercive control" giving rise to a distinctive wrong and harm in connection with intimate partner violence.

[176] The tort of coercive control as put before the Court of Appeal would be made out "where a person (a) in the context of an intimate relationship (b) inflicted a pattern of coercive and controlling behaviour (c) that, cumulatively, was reasonably calculated to induce compliance, create conditions of fear and helplessness, or otherwise cause harm" (para. 104). The Court of Appeal rejected the tort of coercive control on three grounds. First, it found that eliminating the requirement to show harm "would result in a significant change in the jurisprudence with unknown, potentially far-reaching and unintended effects" (para. 119). Second, the elimination of the requirement to prove harm was "inappropriate" because "injuries had been proven" in this case (paras. 111-12). Thus, the proposed tort of coercive control was "based on a

hypothetical" (para. 112; see also para. 111). Third, even if such tort were to include a harm element, it should still not be recognized because the proposed tort would practically be indistinguishable from the tort of IIED. Thus, the proposed tort should in either case be rejected, as it would be indeterminate or deemed unnecessary.

[177] The Court of Appeal rightly concluded that the trial judge erred when she held that existing torts are incapable of addressing "patterns of behaviour" (para. 60; see also para. 59). Respectfully, however, the Court of Appeal's decision not to recognize a tort of coercive control was an error of law that requires intervention of this Court. I take note of the Court of Appeal's caution against recognizing a tort of coercive control without the requirement to prove harm. However, the harm from coercive control is present: it results from the interference with the dignity, autonomy, and equality inherent in the intimate partnership, and thus is actionable without proof of additional consequential harm. Consonant with the lived experience of victims of coercive control, the harm flows from the proof of conduct that, viewed objectively, puts the victim in a subordinate position and undermines her dignity, autonomy, and equality.

[178] As I have noted, even when patterns of conduct are considered, existing torts cannot adequately respond to the unique wrong and resulting harm arising from intimate partner violence. In rejecting Ms. Ahluwalia's proposed tort of coercive control — which expressly considers "the context of an intimate relationship" — the Court of Appeal overlooked that this context logically constitutes an element of the new tort that can render the harm qualitatively different from that addressed by existing torts, including IIED given its requirements (para. 34). Coercive control and its

associated harm are uniquely anchored within the intimate partnership such that the relationship itself is an element of the tort.

[179] Furthermore, and most respectfully, the Court of Appeal's conception of the range of harm that intimate partner violence causes was unduly narrow. In confining its analysis to whether Mr. Ahluwalia's wrongful conduct and the resulting harm to Ms. Ahluwalia could fall within the patchwork of existing torts, the Court of Appeal misapprehended the nature of the wrongful interference at issue. As noted above, the legal interest engaged by intimate partner violence is not merely one of bodily or psychological integrity; it also causes a distinct harm by interfering with the victim's dignity, autonomy, and equality. The Court of Appeal erred by reducing the cumulative injury to a "visible and provable illness" (paras. 69-70; see also para. 91). Requiring proof that establishes coercive control on an objective measure as a prerequisite of liability is one of the elements that would distinguish the tort of intimate partner violence from IIED. This would entail, as will be explained, examining whether the defendant's conduct objectively constituted the impairment of the plaintiff's capacity or willingness to meaningfully make or participate in fundamental decisions concerning the intimate partnership or other core aspects of their own life. I note that the emphasis on coercive control centres the inquiry on the interference with autonomy, thereby excluding conduct that would not objectively give rise to such interference.

[180] Courts must ensure that any novel tort they recognize is properly tailored to the wrong that arises before them, cognizant of the wider social and legal context in which this nominate tort will operate. When a party succeeds in convincing the court that the facts cry out for a remedy, it falls to the court to inform itself of the arguments

and the context, and to devise a proper answer that is reflective of the record and respects principles of fairness (*R. v. Mian*, 2014 SCC 54, [2014] 2 S.C.R. 689, at paras. 37-41; Sharpe, at pp. 84-85). In fairness to the Court of Appeal, it responded to Ms. Ahluwalia's pleadings, but judicial authority is not confined to the options presented by the parties.

(c) *The New Tort of Intimate Partner Violence*

[181] In view of the distinct wrong that may arise in this setting, it is appropriate to recognize a new tort of intimate partner violence. While such violence encompasses conduct that may fall within existing torts such as battery, assault, or IIED, the new tort captures a wider spectrum of abusive conduct. Crucially, the new tort centres on a distinct dimension of intimate partner violence — coercive control — that undermines the victim's dignity, autonomy, and equality, unlike violence directed at a stranger. Whether manifested through a single violent act, discrete acts of violence, or a pattern of abuse, the new tort fixes on coercive or controlling conduct by which one partner overpowers the will of the other.

[182] This is not a new label for a collection of existing torts. The new tort of intimate partner violence fills a gap in the common law by properly recognizing that conduct objectively resulting in domination and control of an intimate partner is a qualitatively distinct wrong from those wrongs redressable through existing torts. It is the intimate partnership context that enables the abuser to exert control over their victim. Liability arises because coercive control constitutes an interference with an intimate partner's autonomy; it is inherently incompatible with an intimate partnership

as it renders the partnership unequal and results in dignitary harm, alongside, but distinct from, the physical or psychological harm that can be caused by abuse.

[183] The tort is most appropriately named "intimate partner violence", a term widely used and understood by courts, academics, and, most importantly, the public. The term "violence", however, should not be interpreted as limiting the tort to physical or psychological violence; rather, as I have explained, it broadly captures conduct that, because of its coercive effects, is incompatible with the fundamental tenets of dignity, autonomy, and equality inherent in an intimate partnership. The design of this new tort seeks to address the gap in the current law by remedying coercive control of one partner by the other, which has been described as "the most emotionally damaging and often the most physically dangerous type" of intimate partner violence (Bala, Maur and Houston, at p. 69). The focus on coercive control further underscores that this form of abuse is tortious not merely because it arises in intimacy, but because it is a distinct wrong giving rise to a distinct harm.

[184] Under the new tort of intimate partner violence recognized in these reasons, a plaintiff must establish three elements: (1) the abusive conduct arose in an intimate partnership or its aftermath; (2) the defendant intentionally engaged in that conduct; and (3) the conduct, on an objective measure, constitutes coercive control. The harm associated with coercion flows from proof of the wrongful conduct. The interference with an intimate partner's dignity, autonomy, and equality itself constitutes the harm experienced by the victim of coercive control. Accordingly, much like certain intentional torts, this new tort does not require the plaintiff to prove any consequential harm separately (Linden et al., at §2.01). Once the three elements of the tort are

established, the harm is necessarily present and liability follows. The quantum of compensatory damages that may then be awarded "must represent a meaningful response to the seriousness of the breach" (*Vancouver (City) v. Ward*, 2010 SCC 27, [2010] 2 S.C.R. 28, at para. 54; see also *Insurance Corporation of British Columbia*, at paras. 40-49). The quantum of damages depends on the extent of the harm and the factual circumstances. Generally, coercive control constitutes a serious breach of a victim's intangible interests, as dignity, autonomy, and equality are fundamental tenets of intimate partnerships. Each element of the new tort bears comment.

[185] First, the impugned conduct must arise in the context of an intimate partnership or its aftermath. 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. As the interveners WCLEAF and RWLC jointly submit, one common method by which abusers seek to exercise coercive control over victims is through litigation abuse — that is, through the misuse of litigation for coercive ends post-separation (I.F., at para. 12). The mere fact that the parties have formally separated does not necessarily put an end to the intimate partner violence.

[186] Second, to attract liability, the defendant must have intentionally engaged in the abusive conduct. The plaintiff must simply establish the defendant's intention to engage in the impugned conduct. The plaintiff need not prove that the defendant intended subjectively to exercise coercive control over them through the abuse, nor that the defendant intended to cause a specific type of harm. The burden of proof of this novel tort is consistent with intentional torts such as battery and assault that require plaintiffs to demonstrate that the defendant intentionally engaged in the wrongful conduct (see *Letang*, at pp. 238-40).

[187] The new tort recognizes that coercive conduct can take many forms, including those captured by existing torts such as battery, assault, and IIED. Acts of physical violence on an intimate partner is a plain example. As scholar Camille Carey notes, "abusive physical contact is particularly offensive in domestic violence situations because it violates the trust that should be present in an intimate partner relationship and is generally part of a pattern of abuse that is aimed at subordinating and controlling the victim" ("Domestic Violence Torts: Righting a Civil Wrong" (2014), 62 *Kan. L. Rev.* 695, at pp. 698-99). 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 (see, e.g., *Divorce Act*, s. 2(1); Stark (2023), at pp. 15-16).

[188] These examples, which are not meant to be exhaustive, illustrate that the tort captures controlling conduct that may not otherwise rise to the level of tortious conduct under existing torts which have a different focus. The new tort dispels the mythology that intimate partner violence must be punctuated by egregious incidents of physical or psychological abuse. I recall that, in Ms. Ahluwalia's marriage, she endured "silent treatment" and denigration that undermined her autonomy in the relationship. Intimate partner violence can comprise psychological interference or harassment that would not rise to the threshold of "flagrant or outrageous" required by IIED but, because it can be understood as part of a low-grade pressure that objectively brings about domination in the relationship, stands as wrongful under the new tort. What matters is not the number or frequency of incidents, but the effect on the protected interests of the victim. Considered in its context, even a single act of violence may objectively constitute coercive control and bring the conduct within the scope of this tort. The abusive character of the alleged conduct becomes evident once the plaintiff establishes that it objectively constitutes coercive control under the third element.

[189] Third, the abusive conduct must, on an objective measure, constitute coercive control. When abuse arises in an intimate partnership, the burden that the plaintiff bears will generally be readily met. This is because a reasonable person would be likely to regard abusive conduct — even where it consists of a single act of violence — as incompatible with the dignity, autonomy, and equality inherent in an intimate partnership, unlike misconduct between persons at arm's length. Such conduct exploits and violates the trust between intimate partners (Carey, at pp. 698-99). It is the intimate partnership context that allows an individual "to shape discrete acts into patterns of dominance that entrap partners and make them subordinate" (Stark (2023), at p. 249).

Two points merit further explanation: first, what constitutes coercive control, and second, how judges may deploy an objective standard to assess whether the abusive conduct constitutes coercive control.

[190] Coercive control has been broadly described as conduct that non-exhaustively includes tactics of isolation; manipulation; humiliation; surveillance; physical, psychological, sexual, and economic abuse; and intimidation that can control, isolate, and entrap intimate partners; it is "a way to encompass and understand the use of a range of behaviours to control and restrict victims", rather than being a specific form of conduct (K. L. Scott et al., "Coercive Control and Family Court in an Intersectional Context", in Bala et al., *Understanding Family Violence in Family Court Proceedings*, 35, at p. 37, citing K. A. Crossman and J. L. Hardesty, "Placing Coercive Control at the Center: What Are the Processes of Coercive Control and What Makes Control Coercive?" (2018), 8 *Psychology of Violence* 196). Central to coercive control is the idea that "[i]t operates through a power dynamic where one partner exerts dominance over the other" (P. G. Jaffe et al., "Recognizing the Impact of Family Violence on Parents and Children: Translating Legal Reforms into Practice", in Bala et al., *Understanding Family Violence in Family Court Proceedings*, 1, at p. 8; Bala, Maur and Houston, at p. 69). The intervener Barbra Schlifer Commemorative Clinic similarly emphasizes that the relevant conduct is "designed to assert dominance, coercion, and control over intimate relationships" (I.F., at para. 18; see also I.F., Registered Nurses' Association of Ontario, at para. 4; I.F., Luke's Place, at para. 9). As Professor Stark explains, coercive control involves "a 'course of conduct' . . . embedded in control structures, that has cumulative effects" ((2023), at p. 129). Accordingly, the individual is subject to a "'condition of unfreedom' . . . that is

experienced as entrapment" (E. Stark and M. Hester, "Coercive Control: Update and Review" (2019), 25 *Violence Against Women* 81, at p. 89 (emphasis deleted), citing E. Stark, *Coercive Control: How Men Entrap Women in Personal Life* (2007), at p. 205).

[191] Coercive control is key to understanding intimate partner violence for two reasons. First, it "exposes dimensions of partner abuse that have gone largely unnoticed", including particularly subtle acts undertaken over a period of time that may not appear abusive outside their relational context (Stark (2023), at p. 254). Multiple interveners emphasize "pattern" or "strategy" as a key attribute (see I.F., Registered Nurses' Association of Ontario, at para. 4; I.F., Barbra Schlifer Commemorative Clinic, at para. 18). Luke's Place, for example, describes "a pattern of cumulative, often-repetitive abuse, in conjunction with coercive behaviour" (I.F., at para. 9, citing 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*, 2nd Sess., 43rd Parl., April 2021). Similarly, the intervener Attorney General of British Columbia asserts that the coercive control lens captures conduct "not adequately addressed by existing common law torts . . . used by perpetrators as part of a constellation of physical, verbal, sexual, psychological, emotional, and/or financial abuse" (I.F., at para. 21).

[192] The emphasis on pattern, however, does not mean that only multiple acts of abuse qualify as coercive control. Rather, it calls on judges to be attuned to the context in which a wrongful act or acts occurred, including the power dynamics of the intimate partnership and any subtle acts that may appear innocuous in isolation. As Hayden J. observes in an English case, "the significance of isolated incidents can only

truly be understood in the context of a much wider picture" (*F. v. M.*, at para. 60). Indeed, viewing intimate partner violence through the lens of coercive control dispels the myth that isolated acts — or even a single act of violence — occur in a vacuum. Karakatsanis J. explained in *Barendregt* that "proof of even one incident may raise safety concerns for the victim" (para. 144; see also S. Zaccour and M. Lessard, "Le droit de la famille: Avancées et défis depuis la reconnaissance de la violence familiale et du contrôle coercitif", in Lapierre, Côté and Frenette, *Contrôle coercitif*, 223, at p. 232). A single act of violence, when considered in context, may objectively constitute coercive control if its impact on the victim undermines their dignity, autonomy, and equality within the relationship. As scholar Linda C. Neilson explained in her report presented to the Department of Justice, "[a] single act of violence or emotional intimidation should be classified as a pattern of domestic violence if it causes lingering fear" and may thus be characterized as "coercive intimate partner violence" ((2013), at p. 32 and fn. 44). Courts must therefore examine the totality of the alleged abusive conduct — regardless of whether each act is independently tortious — to determine the cumulative effects over the victim, keeping in mind the "interconnected nature of the different physical and non-physical behaviour patterns that constitute coercive control" (Wiener, at p. 17). Coercive control focuses on "a cumulative effect that is far greater than the mere sum of its parts" (Stark (2023), at p. 120). It is crucial for judges to be attuned to coercive behaviour in all of its manifestations and the context in which it occurs.

[193] Second, coercive control excludes violence — which may be tortious on another basis — that does not interfere with the victim's dignity, autonomy, and equality, particularly violence associated with resistance against an intimate partner's

attempts at domination or control. When an intimate partner strikes out as an act of resistance against their aggressor, the victim has not acted in a controlling or coercive manner, and the new tort should not cover this conduct (M. P. Johnson, *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance, and Situational Couple Violence* (2008), at p. 5; Bala, Maur and Houston, at pp. 69-70; Department of Justice). Studies confirm that many women respond to abuse with violent acts of resistance (see Johnson, at pp. 51-53; Kelly and Johnson, at pp. 484-85). These instances of intimate partner violence often "result in false identification of the victim as a perpetrator or as an equal participant" when the context in which the acts occurred is overlooked (L. C. Neilson, "Assessing Mutual Partner-Abuse Claims in Child Custody and Access Cases" (2004), 42 *Fam. Ct. Rev.* 411, at p. 426). Furthermore, victims responding to abuse with acts of resistance may have difficulty claiming self-defence (see Neilson (2013), at pp. 31-32, fn. 43; V. Bettinson and N. Wake, "A New Self-Defence Framework for Domestic Abuse Survivors Who Use Violent Resistance in Response" (2024), 87 *Mod. L. Rev.* 141, at p. 152). An overinclusive new tort that captures acts of resistance risks exposing victims of intimate partner violence to retaliatory claims by perpetrators and may inhibit victims of coercive control from coming forward, thereby raising barriers of access to justice (Sowter and Koshan, at p. 343).

[194] 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 (L.

C. Neilson, *Responding to Domestic Family Violence in Family Law, Civil Protection & Child Protection Cases* (3rd ed. 2025), 2017 CanLIIDocs 2 (online), at para. 7.4.1; see C. Caro, *Violence judiciaire: le contrôle post-séparation*, November 13, 2025 (online); see, e.g., *Droit de la famille — 231579*, 2023 QCCS 3557, at para. 40, aff'd 2023 QCCA 1547; *F.S. v. M.B.T.*, 2023 ONCJ 102, 89 R.F.L. (8th) 442, at para. 142). As the intervener NAWL submits, and I agree, this Court must "minimiz[e] the risk that [the new tort] will be weaponized against victims of family violence" (I.F., at para. 5). In addressing litigation abuse, Chappel J. emphasized in *Levely v. Levely*, 2013 ONSC 1026, at para. 12, that judges must ensure legal proceedings "are not hijacked by a party and transformed into a process for further victimizing the other party". Centring the inquiry on the deprivation of autonomy caused by coercive control allows courts to "identify false claims brought by the abuser" (I.F., NAWL, at para. 16).

[195] An additional point bears emphasis. One purpose of tort law is to enable litigants to vindicate their rights (*Hill*, at para. 166; see also J. N. E. Varuhas, "The Concept of 'Vindication' in the Law of Torts: Rights, Interests and Damages" (2014), 34 *Oxford J. Leg. Stud.* 253; Klar and Jefferies, at p. 11). Anchoring the new tort in coercive control distinguishes abuse perpetrated by an intimate partner from other forms of violence, including acts of resistance by victims. Failing to draw that distinction would "do families, men, women and children a disservice" by allowing abusers to subvert the justice system to blame and manipulate victims (Neilson (2013), at p. 35; E. Sheehy and S. B. Boyd, "Penalizing women's fear: intimate partner violence and parental alienation in Canadian child custody cases" (2020), 42 *J. Soc. Welfare & Fam. L.* 80, at pp. 87-88). Labelling acts of resistance as "intimate partner violence"

without recognizing the distinct wrong suffered by the victim of abuse could therefore perpetuate the kind of manipulation and victim-blaming that so often characterizes relationships involving coercive control (Sheehy and Boyd, at pp. 87-88). An overinclusive tort that risks casting victims as tortfeasors of intimate partner violence is an outcome that would undermine the very reason for recognizing the new tort.

[196] Furthermore, coercive control is best understood as abusive conduct and not simply antisocial conduct that often characterizes high conflict relationship breakdown (see Johnson, at p. 11; Bala, Maur and Houston, at p. 70). Courts should refrain from imposing liability based on the inevitable ups and downs of a relationship or for mere dysfunction. Again, an intimate partnership may suffer from dishonesty, infidelity, emotional neglect, lack of maturity, or even cold and dismissive conduct; it may be altogether antagonistic and disagreeable. In some cases, however, violence between intimate partners will not occur in isolation, but within a broader relational context — often over time — that reveals, on an objective measure, the coercive conduct to be wrongful (Sheehy, at p. 144). Partners who respect one another's dignity, autonomy, and equality are unlikely to be physically violent with one another.

[197] Turning to the objective standard that judges must deploy to assess the abusive conduct, the question is whether a reasonable person, fully aware of the relevant context of the relationship, would have perceived the conduct as coercive control. For example, the victim's known vulnerability to the defendant will influence how a reasonable person perceives the impugned conduct (see American Law Institute, *Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm* (2010), at § 46). In such a context, a single act of violence, on its own, may serve to

exploit the power dynamics within the intimate partnership, thereby rendering the victim subordinate to their abuser (I.F., PATHS, at para. 26). As I mentioned, the burden will ordinarily be readily met by the plaintiff, since a reasonable person would perceive abusive conduct to be fundamentally incompatible with an intimate partnership. Often, as was the case for Ms. Ahluwalia, violent conduct forms part of a broader pattern of distinct abusive conduct that together constitute coercive control. However, in certain circumstances, a single act of violence, may, where it meets this standard, constitute coercive control.

[198] The coercive control lens calls for an inquiry that asks whether the defendant's conduct has objectively undermined the plaintiff's ability to make fundamental decisions pertaining to their own life or to meaningfully participate in decision making that concerns the intimate partnership. Coercive control constitutes "breaking down a victim's will" such that "the victim's individual decision-making ability" is removed (Maur (2023), at p. 110). As the Court recognized in *Miglin v. Miglin*, 2003 SCC 24, [2003] 1 S.C.R. 303, at para. 212, "a legacy of abuse" can "colour the parties' interactions", even after the relationship ends. Competent adults are entitled to decide their own fate (*A.C.*, at para. 40, citing *Re T (adult: refusal of medical treatment)*, [1992] 4 All E.R. 649 (C.A.), at p. 661). Conduct that objectively undermines an intimate partner's ability to meaningfully exercise this right, therefore, amounts to coercive control. Evidence adduced by a defendant showing that the victim could make some decisions for themselves — such as leaving the relationship, as in this case, or returning after the abuse — does not preclude a finding of coercive control. The victim need not prove that they experienced a complete loss of autonomy, nor can the defendant be absolved of a past wrong by pointing to some notional reconciliation.

[199] Once it is established that the defendant's intentional conduct objectively constitutes coercive control, the resulting loss of autonomy suffered by the plaintiff in the intimate partnership follows as a matter of course, requiring no separate proof of harm. Any intimate partnership entails a certain degree of sacrifice of personal freedom; partners make choices in service of a common life that do not always accord with their personal desires. This mutual compromise reflects the reciprocity inherent in intimate partnerships. Distinct from the shared compromises that are part of intimate partnerships, coercive control by an aggressor meaningfully constrains the victim's freedom to live their own life *within* the intimate partnership beyond the ordinary expectations of the relationship. Intimate partners have a right to be treated by one another as equals, and abusive conduct that serves to coerce or control one partner and places the other in a position of dominance constitutes a civil wrong under this new tort.

[200] 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. The design of the tort elements accords with Professor Stark's observation that, in coercive control, "[t]he victim's agency is its principal target",

resulting in a loss of autonomy ((2023), at p. 257). It is this dignitary harm that the new tort seeks to remedy.

[201] Properly construed, the trial judge's three "modes of liability" fall under a single framework encompassing *all* forms of conduct where they exert coercive control over an intimate partner, including acts that are "violent or threatening" or "caus[e] the plaintiff to fear for their own safety or that of another person" (para. 52). Under the new tort, such conduct is tortious not because it causes physical or psychological harm, but because it results in a loss of autonomy and inequality of an intimate partner. A threat of violence between strangers may amount to tortious assault, but the same threat, uttered in the context of an intimate partnership, may also function as a tool of coercive control, thereby altering the victim's behaviour to avert future harm. Likewise, a flagrant or outrageous remark may support a claim for emotional distress, but the same remark, when made in the context of an abusive relationship, may have the effect of subordinating an intimate partner. By the same token, a subtle insinuation that may not rise to the level of assault between strangers, or low-level emotional abuse that may not be "flagrant" when viewed in isolation, could still undermine the dignity, autonomy, and equality of an intimate partner when viewed in light of a broader pattern of conduct. Such conduct may constitute a tortious wrong within the intimate partnership because it contributes to the violation of the victim's right to be treated with respect as an equal and autonomous partner.

[202] Finally, the tort of intimate partner violence reflects an appropriately incremental development that is "necessary to keep the common law in step with the dynamic and evolving fabric of our society" (*Salituro*, at p. 670, cited in *Hill*, at para.

85). The new tort does not raise the same difficulties as the tort of family violence as defined by the trial judge. Unlike the tort of family violence, the elements of the new tort are closely tailored to the wrongful conduct at issue (see, e.g., *A.A.*, at para. 300) and specifically addresses the gap left by existing torts (*Wainwright v. Home Office*, [2003] UKHL 53, [2004] 2 A.C. 406, at para. 18). Recognizing a broader tort that encompasses wrongs already adequately redressed by existing torts is inconsistent with the incremental development of tort law. In *Jones*, Sharpe J.A. recognized intrusion upon seclusion as a new tort — carefully responding to the facts before the court — rather than embracing a more expansive approach adopting the four privacy torts developed in the U.S. (para. 18). He explained that "[a] cause of action of any wider breadth would not only over-reach what is necessary to resolve this case, but could also amount to an unmanageable legal proposition that would . . . breed confusion and uncertainty" (para. 21).

[203] Here, the trial judge's second mode of liability (conduct that "constitutes a pattern of coercive and controlling behaviour") properly and precisely identified the gap that existing torts failed to address for intimate partner violence, drawing on Ms. Ahluwalia's submissions describing a "pattern of violent and controlling conduct" (paras. 34 and 52; see also para. 35) and the relevant evidence adduced. The trial judge noted that these facts disclose "unique elements that justify recognition of a unique cause of action" and that coercive control involves "uniquely harmful aspects of family violence" that are unaddressed by existing torts (para. 54; see also para. 59). Her first and third modes of liability, however, overlap fully with existing torts, as she acknowledged. In this exercise, courts are guided by the principle *ubi jus ibi remedium* ("where there is law (a right) there is a remedy" (J. Gray, *Lawyers' Latin: A Vade-*

Mecum (2006), at p. 133)), a maxim relied upon by the Court when considering the recognition of new grounds for tort liability (*Nevsun*, at para. 118, citing *Sidaway v. Gov. of Bethlem Royal Hospital*, [1985] 1 A.C. 871 (H.L.), at p. 884). Only where there is a right for which the existing torts cannot provide relief should the courts fashion a new remedy to fill the gap.

[204] The new tort recognized in these reasons is responsive to the intimate character of such relationships in a way that existing torts are not, by confronting the harm to dignity, autonomy, and equality in intimate partnerships (Réaume, at p. 93). The evolution of the common law proposed here is constrained to fill the void left by established torts that have proved insensitive to coercive control as a distinct wrong on intimate partnerships (Maur (2023), at p. 117). The consequences of such recognition are neither complex nor indeterminate but are instead properly tailored to the wrongful conduct at issue, seeking to "defin[e] the precise contours of a legal right" (Sharpe, at p. 199). It builds upon precedents and existing social and legal understanding of intimate partner violence. In aligning the common law with the legal and societal consensus against such a wrong, the courts are well within their proper domain and function (*ibid.*; Goudkamp, at pp. 65-66). To constrain its development when the "social facts, values, concerns, and expectations" that judges legitimately consider in adjudication of private law disputes so clearly cry out for such a change would undermine the vital social functions that the law serves in our society (J. Stapleton, *Three Essays on Torts* (2021), at p. 26; see also p. 1).

(d) *Summary of the Elements for Establishing Liability Under the Tort of Intimate Partner Violence*

[205] To summarize, in making a finding of liability under the tort of intimate partner violence, a trial judge must assess whether the evidence establishes all three elements and evaluate the quantum of damages required to remedy the resulting harm. The burden of proof rests with the plaintiff on the civil standard of balance of probabilities.

[206] First, the defendant's wrongful conduct must have occurred during the course of an intimate partnership or in its aftermath.

[207] Second, the defendant must have intentionally engaged in the abusive conduct. The plaintiff need only show that the defendant intended to engage in the impugned conduct, not that they subjectively intended to control their intimate partner. With respect to the abusive conduct itself, the plaintiff must adduce specific evidence to make out the tort claim. However, evidence may show a range of abusive conduct that appears less harmful in isolation but which may, considered cumulatively, form a pattern of coercive control. For guidance, the following are some types of conduct that are capable of constituting coercive control: physical and sexual violence; emotional and psychological abuse, including verbal abuse; harassment, humiliation, and denigration; financial control, stalking, and surveillance; behaviour that isolates a partner from others, or that denies a partner access to educational, employment, and recreational opportunities; litigation abuse; and threatening conduct, including threatening to harm the children or take them away, and threatening to commit suicide (see United Kingdom, Home Office, *Controlling or Coercive Behaviour: Statutory Guidance Framework*, April 5, 2023 (online), at pp. 15-16; Canadian Association of Chiefs of Police, *National Framework for Police Intervention in Intimate Partner*

Coercive Control, July 2025 (online), at pp. 5-7). The foregoing list is merely illustrative and should not be treated as exhaustive.

[208] Third, the plaintiff must show the conduct to be, on an objective measure, coercive control. The trial judge must determine whether a reasonable person, fully apprised of the relevant context of the relationship, would have perceived the defendant's acts, considered cumulatively, as amounting to an assertion of control over the plaintiff that has the effect of depriving them of their dignity, autonomy, and equality in the relationship. The key feature of coercive control is, on an objective measure, the breakdown of the plaintiff's will, manifested through a diminished power to decide important matters in their own life or to meaningfully take part in decisions that affect the intimate partnership. Neither the timing of the commencement of the claim nor when the plaintiff left the relationship has any necessary bearing on whether the plaintiff can successfully establish this element. The threshold serves an essential limiting function by anchoring the tort in the deprivation of autonomy, but where circumstances show that the reasonable person would conclude that the abusive conduct is incompatible with the intimate partnership, the burden will be readily met. In particular, courts must of course take care not to mischaracterize a victim's resistance to a partner's attempt at domination, or all misconduct in a high conflict breakdown, as coercive control under the new tort. Mere dysfunction of an intimate partnership, or a relationship marked by an imbalance between the parties in the absence of coercive control, is not intimate partner violence in this sense. But at the same time, trial judges must be cautious not to "subject evidence of non-physical [intimate partner violence] to heightened suspicion or skepticism, minimize it, or

misattribute its harms to a high conflict relationship or post-separation emotionality" (I.F., WCLEAF and RWLC, at para. 29; Sowter and Koshan, at p. 340).

[209] Proof by the plaintiff of these three elements establishes liability under the tort of intimate partner violence. The plaintiff's dignitary harm flows from proof of the intentional wrong and does not require proof of other consequential harms. On this basis, the trial judge may then award general compensatory damages to provide redress for the harm to dignity, autonomy, and equality suffered through coercive control, as well as any other harm that flows therefrom.

D. *Situating Tort Claims in a Family Law Proceeding*

[210] Adjudication of claims in tort can present difficulties for judges and the parties in family proceedings who must, at the same time, evaluate claims brought under different family law statutes. Tort liability for abusive conduct gives rise to damages that aim to remediate, punish, deter, and vindicate. By contrast, statutory remedies under applicable family law legislation typically seek to resolve economic consequences of relationship breakdown on a basis other than fault. The Court of Appeal decided that "[t]he starting point for a determination of financial issues arising from the marriage is the application of the statutory provisions" (para. 136). It concluded that "[w]hen claims other than those arising directly from the statute are raised in a family law proceeding, the statutory entitlements may inform those determinations" (para. 137). While I would not apply an ordering principle as an unbending rule in all cases, I agree that courts should be mindful of the risk of conflating separate inquiries based on different objectives.

(1) Statutory Remedies Have a Different Purpose Than Remedies in Tort

[211] Statutes such as the *Divorce Act* and the *Family Law Act* provide for equitable or compensatory mechanisms that mitigate the economic consequences of the breakdown of a relationship (*Moge*, at p. 864; *Bracklow*, at paras. 34 and 48; *Stein v. Stein*, 2008 SCC 35, [2008] 2 S.C.R. 263, at para. 25, per Abella J., dissenting). Family property schemes are in their detail nuanced, but as a general matter their orientation is to promote economic equality in marriage or certain relationships that are tantamount to marriage. Important to these schemes is the idea that marriage is "a joint economic endeavour" (*Anderson v. Anderson*, 2023 SCC 13, [2023] 1 S.C.R. 473, at para. 40). Support regimes under statute rest on fundamental principles of mutuality and interdependence (*Bracklow*, at para. 20). Choices made during such relationships, including those made voluntarily and in good faith, may leave one partner economically disadvantaged and dependent on the other. Legislation governing the provision of spousal and child support, as well as the division of family property, thus serves, in the main, to ensure that the economic consequences of separation remain equitable based on a fair division of labour between the partners in the relationship. Even in respect of the misconduct that justifies the unequal division of family property, for example, the relevant "economic fault" under statute is typically understood as a failure of one partner to contribute to the union as a joint economic endeavour. While that may coincide with intimate partner violence in some circumstances, the wrong is of a different character.

[212] As a general proposition, the remedial purposes of tort law may be achieved by relying upon the equitable or compensatory mechanisms provided in

statute. One award may "impact" on the other, as the Court of Appeal suggested, but it is useful for present purposes to keep the remedies separate (para. 140). The equitable or compensatory considerations that underlie equalization provisions do not seek to rectify wrongdoing as between intimate partners in tort, but to account for the parties' contribution in relation to family property. This is evident from a review of the relevant considerations enumerated in the *Family Law Act*. Section 5(6) notes for example the failure to disclose pre-existing debts or other liabilities (s. 5(6)(a)); the intentional or reckless depletion of family property (s. 5(6)(d)); the incurrence of a disproportionally large amount of debt or other liabilities (s. 5(6)(f)); or "any other circumstance relating to the acquisition, disposition, preservation, maintenance or improvement of property" (s. 5(6)(h)). The compensatory orientation of family property schemes is designed to address the contribution of each partner, in property or in services, to the acquisition of family property. Compensation to one partner by the other seeks to recognize those contributions, rather than address liability for a civil wrong, as in tort.

[213] The same observations can be made in respect of spousal support, which pursues various policy objectives that are enumerated in s. 15.2(6) of the *Divorce Act* and s. 33(8) of the *Family Law Act*. Those include recognizing any economic advantages or disadvantages arising from the marriage or its breakdown; apportioning between the spouses the financial consequences of caring for any children of the marriage beyond basic child support obligations; relieving any economic hardship resulting from the breakdown of the marriage; and promoting the economic self-sufficiency of each spouse within a reasonable time. As our Court observed in *Bracklow*, these "objectives reflect the diverse dynamics of the many unique marital relationships" (para. 35).

[214] Importantly, spousal support is predicated on financial needs and means, not on a formal finding of fault or misconduct in the sense relevant to the law of obligations in common law or civil law. Both s. 15.2(5) of the *Divorce Act* and s. 33(10) of the *Family Law Act* make this stipulation clear. As the Court noted in *Moge*, "the focus of the inquiry when assessing spousal support after the marriage has ended must be the effect of the marriage in either impairing or improving each party's economic prospects" (pp. 848-49). Indeed, where spousal support has a "compensatory" character, it is designed to compensate one partner's loss in earning potential for the future, tied to past division of labour within the marriage (p. 860). It is not compensation that seeks to make good on a past civil wrong, as in the case of civil liability in tort for fault.

[215] It may be that intimate partner violence coincides with conduct that shows the abuser to have failed to meet other obligations in the relationship. But it is best to underscore that remedies in tort pursue a different purpose. Tort law "operates to provide justice to victims and peace and security to society. It serves to punish wrongdoers, to deter wrongdoing, to compensate victims, and to vindicate rights" (Klar and Jefferies, at p. 11). Unlike the statutory entitlements described above, the purpose of tort law is to find fault and correct wrongdoing. Where damages are awarded, they are calculated on the basis of what the injured party has lost, and what is required to put them back into the situation they were in prior to the wrongful act (S. G. A. Pitel, "The Characteristics of Torts", in E. Chamberlain and S. G. A. Pitel, eds., *Fridman's The Law of Torts in Canada* (4th ed. 2020), 1, at p. 2).

[216] Of course, intimate partner violence may be the cause of financial disparities that emerge after breakdown. As will be discussed below, one party's tortious conduct in the marriage may in fact have caused or exacerbated the other's financial needs post-separation. The relevance of such facts lies not in establishing fault in tort. Compensatory support under *Moge* seeks to make up — going forward — for lost earning power flowing from the division of labour in the marriage, not to compensate — looking backwards — for a civil wrong committed in the past. Instead, the need justifying support confirms, without more, that the partnership led to an economic dependency relevant to support. Nonetheless, because of the inevitable overlap in the material facts presented to the court, it is likely that judges will be called upon to make findings that are relevant both in tort and under statute. It will therefore be generally helpful to begin by addressing the claim in tort insofar as intimate partner violence, if established, may be relevant to other issues, including parenting post-separation.

(2) <u>The Trial Judge Can Determine the Appropriate Sequence Between a Tort Claim and a Statutory Claim</u>

[217] The trial judge began her analysis with the tort claim. After finding Mr. Ahluwalia liable and awarding damages to Ms. Ahluwalia, she considered child and spousal support, and equalization. The Court of Appeal disagreed with this approach, directing that the trial judge should have started with the application of the statutory provisions (para. 136). I understand the view that certain statutory claims, in particular child support, are understood generally to be of first-order importance. But in my respectful view, the trial judge was not required to begin her analysis with the statutory claims. In light of the allegations arising in this case, she was correct to turn

first to Ms. Ahluwalia's claim in tort in that her factual findings on that issue would likely inform how she would address certain statutory remedies while keeping the distinct orientation of those schemes in mind.

[218] Findings of intimate partner violence may indeed be relevant to a court's decision of whether the misconduct had an impact on the other spouse's ability to be self-sufficient (*Leskun v. Leskun*, 2006 SCC 25, [2006] 1 S.C.R. 920, at para. 21). In this case, the financial consequences of Mr. Ahluwalia's conduct towards Ms. Ahluwalia are clear in the trial judge's factual findings. Ms. Ahluwalia never kept any of her income during the marriage, her earnings were used solely for family expenses, and Mr. Ahluwalia closely monitored her spending habits (paras. 108-9). After separation, Mr. Ahluwalia closed all their joint accounts and unilaterally terminated the credit card Ms. Ahluwalia used to purchase groceries (para. 110). Mr. Ahluwalia had a complete hold over Ms. Ahluwalia's finances, making her entirely financially dependent on him during the marriage and incapable of being self-sufficient immediately after the marriage. While these facts were key to the trial judge's disposition as to the tort claim, their consequences on Ms. Ahluwalia's "condition, means, needs and other circumstances" also informed entitlement to spousal support under s. 15.2(4) of the *Divorce Act*.

[219] A finding of intimate partner violence is also highly relevant to parenting and contact orders under the *Divorce Act* and the *Children's Law Reform Act*. Both statutes stipulate that in considering the best interest of the child, the court must factor in the impact of family violence, including "whether there is a pattern of coercive and

controlling behaviour in relation to a family member" (*Divorce Act*, s. 16(4)(b); *Children's Law Reform Act*, s. 24(4)(b)).

[220] I would therefore not interfere with the trial judge's chosen sequence. Where the record includes both statutory and tort-based claims arising from family violence, resolving the claim in tort, before proceeding to the statutory claims, may be more conducive to a fulsome appreciation of the record and the facts. The key principle is to treat the tort-based and statutory claims as two analytically distinct inquiries, respecting their differing objectives. Judges are best placed to determine the appropriate sequence in which the issues are to be addressed. They can tailor their orders to account for the primary needs of children under s. 15.3 of the *Divorce Act*.

(3) Assessing Damages for the Tort of Intimate Partner Violence

[221] The trial judge awarded Ms. Ahluwalia $150,000 in damages: $50,000 in general compensatory damages for Ms. Ahluwalia's depression and anxiety caused by Mr. Ahluwalia's abuse, and loss of earning potential; $50,000 in aggravated damages for Mr. Ahluwalia's "overall pattern of coercion and control and the clear breach of trust"; and $50,000 in punitive damages. She ordered that amount in relation to the tort of family violence and would have directed Mr. Ahluwalia to pay the same amount, in the alternative, based on proof of harm made under the existing torts of assault and IIED. The Court of Appeal noted that the damage assessment was higher than in previous cases. But it declined to interfere with the trial judge's determination of general compensatory and aggravated damages based on deference and because it recognized the higher damage award reflected "an emerging understanding of the evils of intimate partner violence and its harms" (para. 128). The court overturned the

punitive damages award on the ground that the trial judge had "made no finding that the award of general and aggravated damages was insufficient to achieve the goals of denunciation and deterrence" (para. 132). Both parties accept the Court of Appeal's decision on this point, and have settled the quantum of general compensatory and aggravated damages at $100,000, an amount that is not at issue before the Court. Nevertheless, because the effect of the present judgment is to recognize a novel tort of intimate partner violence, the assessment of damages require comment in these circumstances.

[222] Consistent with the corrective function of tort law, the guiding principle in assessing the quantum of compensatory damages is that the award should restore the plaintiff to the position they would have been in had the specific wrong not occurred (Pitel, at p. 2). Quantifying the value of intangible losses, such as those associated with physical inviolability or emotional suffering is a notoriously difficult task. This is no less true for the measure of the losses associated with dignity, autonomy, and equality, resulting from coercive control. As this Court observed in the civil law case of *de Montigny v. Brossard (Succession)*, 2010 SCC 51, [2010] 3 S.C.R. 64, at para. 27, "the exercise of reasoned discretion remains the rule, [and] the judge must also give as much priority as possible to following established judicial practice while adapting it to the specific circumstances of each case". Of course, there is no body of Canadian precedents at this time with which to guide courts in awarding damages for the novel tort rooted in coercive control. Future damage awards must reflect the specific nature of the tort, its various manifestations, and the extent of the harm it causes to the victim's dignity, autonomy, and equality.

[223] In her submissions, Ms. Ahluwalia denounces a "family discount" in the assessment of damages awarded for family violence (A.F., at para. 31). She cites a number of lower court decisions in which damages awarded to victims of family violence, usually women, were lower than what might be expected for similar conduct between strangers. She alleges that the "unconscionably low damage awards *must* occur as a result of a mindset that is infected with myths and stereotypes" (A.F., at para. 36 (emphasis in original)). Mr. Ahluwalia argues that the decisions relied on by Ms. Ahluwalia are outdated and do not reflect more recent trends in the caselaw in which the quantum of damages has increased, particularly in reaction to the Court of Appeal's decision in this dispute.

[224] The phenomenon described by Ms. Ahluwalia is well documented. As an example, damage awards between intimate partners for violence involving a sexual element have often been lower than awards for the harm caused by sexualized violence outside intimate relationships. In *Zando v. Ali*, 2018 ONCA 680, the Court of Appeal upheld a $200,000 award for one instance of sexual assault between colleagues. In *Badreddine v. Shapovalov*, 2019 ONSC 4914, the court awarded the plaintiff $100,000 after the defendant was held liable for attempting to use a "date rape" drug on the plaintiff. In *R.Y.H. v. Y. LTD.*, 2021 SKQB 28, the court awarded $100,000 in general and aggravated damages for a single incident of sexual assault. In *Seymour v. Nole*, 2022 BCSC 867, the court held the defendant liable for $272,300 in damages for non-consensual intercourse with the plaintiff while she was asleep. Such awards are difficult to reconcile with decisions like *Hammond*, where a comparable act in an intimate partnership yielded markedly lower damages of $10,000. While the court recognized that the wife was indeed entitled to "general damages for the affront to her dignity, as

well as for the violation of her personal and physical autonomy" (para. 110) as discussed earlier, it concluded that "$10,000 in general damages [was] appropriate to compensate [the wife] for pain, suffering and loss of enjoyment of life, and to vindicate her dignity and personal autonomy" (para. 116).

[225] This reflects what some legal scholars refer to as an inappropriate "sexual exceptionalism": the tendency to treat harm involving intimate partners as less serious, less credible, or less worthy of compensation than equivalent harm between strangers (Sowter and Koshan, at pp. 331-32; see also M. Chamallas, "Social Justice Tort Theory" (2021), 14 *J. Tort Law* 309, at p. 331; Eisen, at p. 199). Such exceptionalism can be perpetuated through myths and stereotypes relating to implied consent, marital harmony, and wives' alleged propensity to fabricate. It reflects an unwillingness to recognize the full depth of their injury (J. Koshan, "The Judicial Treatment of Marital Rape in Canada: A Post-Criminalisation Case Study", in M. Randall, J. Koshan and P. Nyaundi, eds., *The Right to Say No: Marital Rape and Law Reform in Canada, Ghana, Kenya and Malawi* (2017), 257, at pp. 259-60; Eisen, at pp. 195-97).

[226] Empirical data gathered over the past two decades supports Ms. Ahluwalia's contention that damages in tort awarded for family violence more broadly tend to be comparatively low. In a 2007 review of 25 final decisions dealing with tort claims for spousal violence, author Laura Buckingham found that the court awarded less than $10,000 in 9 of them, and 6 cases were unsuccessful and therefore no damages were awarded at all ("Striking Back: The Tort Action for Spousal Violence" (2007), 23 *Can. J. Fam. L.* 273, at pp. 276 and 304; see also Kelly, at p. 335). And in a more recent survey of 65 final decisions relating to claims for damages

for spousal violence released between January 2007 and January 2024, scholar Samantha Eisen found that the average damage award in family courts across all provinces was $43,512.57, with a median damage award of $17,500 (p. 191; see also the overview for Quebec in A. Lakhdar, "Octroi de dommages-intérêts pour la violence conjugale et l'aliénation parentale en matière familiale", in Service de la qualité de la profession du Barreau du Québec, vol. 556, *Développements récents en droit familial* (2024), 77, especially at p. 115). This data supports the view that courts have historically failed to appreciate the full extent of the harm caused by violence within the context of an intimate relationship in part by decontextualizing the basis of liability from the intimate partner setting.

[227] Intimate partner violence is a social ill and a deep affront to one's dignity. The common law's remedial response against it must therefore be corrective and strongly denunciatory. This cannot occur when even those plaintiffs who make out their claim in court are unable to fully recover their losses due to myths or stereotypes. However, loss of dignity is not simply an aggravating factor that justifies a higher quantum of damages. As previously discussed, in the context of intimate partner violence, the interference with dignity is a feature of the tort itself: it is inherent to, and indissociable from, the conduct and its harm as is evident in respect of the elements of the new tort identified here. General compensatory damages, therefore, must fully redress the injury to the victim's autonomy arising from a conduct amounting to coercive control. Violence that occurs at the hands of one's intimate partner is arguably more harmful, or at least differently harmful, than violence at the hands of a stranger. Where a court is satisfied that the defendant's tortious conduct arose in the context of intimate partner violence, the damages awarded must acknowledge and fully

compensate the plaintiff for that harm, without discount or exceptionalism. It would be an error to presume that the violence that occurs in the context of an intimate partnership is somehow less damaging.

VII. Application

A. *Liability Under the Tort of Intimate Partner Violence*

[228] The first element of the tort requiring the plaintiff to establish that the alleged acts arose in an intimate partnership or its aftermath is met. From the outset of the marriage in 1999, the parties shared a common life of interdependence in which Ms. Ahluwalia was responsible for the household and caregiving and Mr. Ahluwalia provided for the family financially. Until at least their separation, they pursued a conjugal relationship characterized by the financial and affective interdependence indicative of an intimate partnership (trial reasons, at paras. 7-18). The trial judge further identified Mr. Ahluwalia's closure of the parties' joint accounts following their separation as constituting part of the tortious conduct under the new tort she recognized (paras. 78 and 110).

[229] The second element requires the plaintiff to establish that the defendant intentionally engaged in allegedly abusive conduct and was met by Ms. Ahluwalia here. The trial judge's factual findings encompassed various forms of abusive conduct. First, the trial judge found that Mr. Ahluwalia intentionally engaged in physically abusive and violent conduct against Ms. Ahluwalia over the whole of the marriage and after their separation. She determined that Mr. Ahluwalia physically assaulted Ms. Ahluwalia on at least three separate occasions during this 16-year period. Sometime

early in their relationship, Mr. Ahluwalia "beat [Ms. Ahluwalia] black and blue", causing her extensive bruising, because a tour guide complimented her appearance (para. 97). In 2008, Mr. Ahluwalia slapped Ms. Ahluwalia and strangled her (para. 100). And in 2013, he restrained her wrists, shook her by the upper arms and shoulders, and slapped her across the side of her head (para. 102).

[230] Second, the trial judge further found that these instances of physical violence occurred amid prolonged emotional, psychological, and verbal abuse from the beginning of the marriage (para. 105). Mr. Ahluwalia would often get angry at Ms. Ahluwalia when he perceived that she had "disrespected his family, been the object of other men's interest or desire, or not fulfilled her duties in the home to his satisfaction" (*ibid.*). He raised his voice in anger at Ms. Ahluwalia, including in front of their friends. He insulted and belittled her about her appearance and her difficulties conceiving, and threatened to leave her and the children penniless. The trial judge accepted that he would withhold communication for extended periods — what Ms. Ahluwalia described as the "silent treatment" — until she complied with his sexual demands (para. 106).

[231] Third, beyond the physical and psychological abuse, the trial judge found that Mr. Ahluwalia exercised financial control over Ms. Ahluwalia. He collected her income, made every financial decision, and monitored her spending habits. Upon separation, he closed their joint bank accounts, thus depriving Ms. Ahluwalia from accessing funds to which she was entitled. The Court of Appeal affirmed the trial judge's findings of fact regarding these various types of abusive conduct throughout the marriage (paras. 13-14).

[232] The third element requires the plaintiff to demonstrate that the abusive conduct, on an objective basis, constitutes coercive control. I am satisfied, based on the trial judge's findings, that Ms. Ahluwalia succeeded in showing that all of the abusive conduct she proved — from the apparently isolated acts of violence down to the silent treatment connected to the husband's sexual demands — would be understood by the reasonable person as a project to dominate the relationship and deprive Ms. Ahluwalia of her autonomy. The trial judge's conclusion that Mr. Ahluwalia's "pattern of coercive and controlling behaviour" was "calculated to produce harm" establishes this element (para. 111). She observed a "general pattern" of conduct involving physical, emotional, and psychological abuse (para. 96), whose combined effect amounted to coercive control over Ms. Ahluwalia, and of which the trial judge concluded that Mr. Ahluwalia was aware. For example, she held that the first incident of physical violence was "designed to condition [Ms. Ahluwalia] to her new reality", and that Mr. Ahluwalia "would meet challenges to his authority with physical violence" (para. 99). The trial judge described these various incidents of abuse as "manifestations of [Mr. Ahluwalia's] control", which cumulatively constitute the wrongful conduct at issue (para. 106). The physical, verbal, emotional, and psychological abuse pleaded by Ms. Ahluwalia in support of her claim for general damages formed part of the overall pattern of control exercised by Mr. Ahluwalia, which she clearly described as having effectively rendered her subordinated to his domination (Mr. Ahluwalia's Compendium, at pp. 132-34). I recall that, in her amended answer filed before the trial judge as a self-represented litigant, she specifically alleged, with supporting facts, that by physical, psychological and financial means, Mr. Ahluwalia "exercised his controlling nature over [her]" (p. 133). While the Court of Appeal rejected the creation

of a new tort of coercive control, it accepted the trial judge's findings of fact that Mr. Ahluwalia's conduct was "coercive and controlling" (para. 91; see also para. 13).

[233] The effects of coercive control over Ms. Ahluwalia's dignity, autonomy, and equality is clear. Beyond the "toll on [her] mental and physical well-being", Ms. Ahluwalia explained that this coercive control eroded her general sense of self-worth and left her in a subservient position (Mr. Ahluwalia's Compendium, at p. 133). She stated that Mr. Ahluwalia's "controlling nature" resulted in her not "being able to accomplish much" (*ibid.*). She responded to his conduct by "continu[ing] to obey and placate" him (p. 128). In her closing submissions before the trial judge, she argued that "humiliation, degradation, violence, oppression, inability to complain, reckless conduct which shows a disregard of the victim" are relevant bases for assessing tort damages (Ms. Ahluwalia's Closing Submissions at Trial, dated February 22, 2022, at p. 9).

[234] In finding that the physical abuse "condition[ed] [Ms. Ahluwalia] to obey [Mr. Ahluwalia]" (para. 73), the trial judge made clear that Ms. Ahluwalia experienced a loss of autonomy that is distinct from physical and psychological injury. Ms. Ahluwalia had to comply with Mr. Ahluwalia's demands for sex to alleviate some of his subtler methods of abuse, such as the silent treatment (para. 107). She characterized the silent treatment she was subjected to as something that "kills you from inside" (Excerpt of Proceedings at Trial, vol. IV, at p. 87). The verbal abuse that she experienced not only left her in emotional distress (trial reasons, at para. 111), but it also caused her a loss of dignity in the eyes of others (para. 81). For the trial judge, Ms. Ahluwalia was "powerless to leave the relationship" (para. 114). At one point, as noted by the trial judge, Ms. Ahluwalia testified to experiencing suicidal thoughts, standing on a balcony and wondering what would happen to her children if she were to "fall"

(Excerpt of Proceedings at Trial, vol. IV, at p. 292). She could not leave the relationship because of family expectations, her social and financial dependence on Mr. Ahluwalia, and "because of the children" (trial reasons, at para. 73). In describing the dynamic, Ms. Ahluwalia said that "he did not let me go" — explaining in her own words the trial judge's finding that she was "completely subservient to [Mr. Ahluwalia's] needs" (para. 75; Excerpt of Proceedings at Trial, vol. IV, at p. 95). These findings were further bolstered by evidence from the witness testimonies that the trial judge accepted (trial reasons, at para. 75). The trial judge's findings sufficiently establish that Mr. Ahluwalia's abusive conduct objectively constitutes coercive control.

[235] It is true that Ms. Ahluwalia retained some ability to make decisions in her life, especially towards the end of the relationship, such as the time she left for India against her husband's wishes in 2016. Nonetheless, Mr. Ahluwalia's domination and grip over Ms. Ahluwalia remained a defining characteristic of their relationship, notwithstanding the occasional act of defiance. Ms. Ahluwalia's free will in the relationship was overwhelmed by Mr. Ahluwalia's coercion, which allowed him to dominate the intimate partnership. Viewed from this perspective, the husband's physical assaults, psychological humiliation and intimidation, conduct intending to inflict emotional distress, efforts to isolate Ms. Ahluwalia from family members, silent treatment as pressure for sex, and repeated examples of financial control deprived her of her autonomy and cast her into subordination incompatible with her rights to dignity, autonomy, and equality in their intimate partnership. This was the harm that Ms. Ahluwalia experienced. Mr. Ahluwalia's conduct met all the requirements of the tort of intimate partner violence.

B. *The Quantum of Damages in the Courts Below*

[236] At trial, Mr. Ahluwalia was held liable for the tort of family violence and Ms. Ahluwalia was awarded $50,000 in compensatory damages, $50,000 in aggravated damages and $50,000 in punitive damages. As noted, the trial judge also held that in the alternative, Mr. Ahluwalia was liable for assault and IIED, such that she would have awarded the same amount on the basis of existing torts. Following the reduction in damages on appeal, the parties settled damages at $100,000.

[237] The question arising on this appeal is not one of the quantum of damages — that is settled — but one of their proper basis and scope. The trial judge held that existing torts were inadequate as a basis for liability to cover the whole range of the facts alleged and established by Ms. Ahluwalia. The trial judge nevertheless would have fixed the same amount in compensatory, aggravated, and punitive damages in either case. The Court of Appeal disagreed as to the basis of liability, but still affirmed the trial judge's award for compensatory and aggravated damages. Although the parties have agreed not to contest the quantum of damages for the purposes of this appeal, which I accept, these approaches to assessing damages nonetheless bear scrutiny in light of the nature of the tort upon which liability rests.

[238] In my respectful view, the trial judge's determination of damages under the new tort of family violence is inconsistent with the same amount she would have awarded under the existing torts. The "tort of family violence" she found was in fact a composite of several freestanding causes of action, which the trial judge referred to as "modes of liability". The first and third "modes", she said, serve the exact same

function as the torts of battery, assault, and IIED (paras. 52-53). Only the second "mode" of liability concerning coercive control was truly novel.

[239] In effect, then, when the trial judge held that Mr. Ahluwalia was liable for the tort of family violence, she was concluding that Mr. Ahluwalia was liable not just for the existing torts of assault, and IIED, which she characterized as "included", at paras. 103 and 111 of her reasons, but for conduct amounting to coercive control that was not also "included". Yet, the trial judge went on to decide that, in the alternative, the same amount, $150,000, would have been appropriate even without that distinct and additional injury arising from coercive control. Respectfully stated, that conclusion was mistaken. It fails to acknowledge that coercive control — the wrongful conduct unaddressed by existing torts — gives rise to a distinct wrong and to a distinct harm. If, as she correctly found, coercive control causes additional harm, then the award for liability under the tort of family violence would have reflected that added scope since the damages must be adjusted to reflect the additional injury — the gap left without remedy through existing torts. Furthermore, compensation for the interference with autonomy — the additional injury deserving of redress — would fall under general compensatory damages, rather than an "aggravation" of physical and psychological harms. The calculation of non-punitive damages at $100,000 for the alternative basis of liability under existing torts thus reflected an error of law in the characterization of the source of the harm. I note further, to confirm this view, the trial judge's comment that the "damage award [against Mr. Ahluwalia] is high when compared to other cases involving 'spousal assault', [because] it reflects the overall pattern of coercion and control" (para. 113). In other words, there was an additional injury flowing from Mr. Ahluwalia's coercive control for which general compensatory and aggravated damages were necessary, above and beyond that associated with the existing torts. If general and

aggravated damages for the conduct that extended to include the novel tort was $100,000, the alternative award should logically have been less.

[240] The Court of Appeal rejected the trial judge's recognition of the tort of family violence (para. 93). It also declined to recognize a narrower tort of coercive control, finding that Mr. Ahluwalia's wrongful conduct fit within the existing torts of battery, assault, and IIED (paras. 106 and 110). Yet, at the same time, the Court of Appeal held that the compensatory and aggravated damages ought to be fixed at $100,000, consistent with the trial judge's determination of damages because, on appeal, the trial judge's determination was deserving of deference (paras. 127-29). This finding was based, at least in part, on the view that the injuries resulting from coercive control are completely accounted for under existing torts. This reflects a failure to consider coercive control in intimate partnerships as distinctly wrongful conduct — whether it falls within the second mode of the trial judge's tort of family violence or as a new tort of intimate partner violence — and the distinct harm that arises from it. Respectfully, this was an error of law to which no deference was owed. Since coercive control in fact yields a distinct and unique interference with dignity, autonomy, and equality, the Court of Appeal's reasons carry forward, for the calculation of damages, the internal inconsistency in the trial judge's reasons. That said, I would leave the decision on the quantum of damages undisturbed because the parties elected to settle this question out of court, but I would specify how that amount spoke to the tortious conduct.

VIII. Conclusion and Disposition

[241] In light of the foregoing, I would set aside the order of the Court of Appeal in part. Rather than restore the order of the Superior Court in its entirety, I would recognize that Mr. Ahluwalia's liability rests on the new tort of intimate partner violence. As I noted above, the parties resolved that they would not raise the issue of the quantum of damages in this Court.

[242] As a result, only the basis for liability in tort was formally in issue before us. For the foregoing reasons, the appeal must be allowed in part. Paragraph 2 of the formal order of the Court of Appeal states: "THIS COURT FURTHER ORDERS THAT the new torts of domestic violence or coercive control as defined in this case shall not be recognized." I would set aside this declaration and replace it by one that states that the new tort of intimate partner violence is recognized.

[243] The quantum of damages set by the Court of Appeal is no longer in dispute. In these circumstances, I would not interfere with para. 1 of the Court of Appeal's order, which states that the appeal to that court "shall be allowed in part and the damages award shall be reduced by $50,000.00".

[244] The trial judge's order at para. 15 cannot, however, be fully restored, except as to the quantum of damages of $100,000, as the amounts set by the trial judge under the tort of family violence for general compensatory and aggravated damages respectively do not reflect compensatory damages associated with repairing the loss arising from coercive control. Paragraph 15 of the order of the Superior Court recorded the following distribution for the damage award:

> 15. [Mr. Ahluwalia] shall pay to [Ms. Ahluwalia] damages for family violence as follows:

a. **$50,000** in compensatory damages in relation to [Ms. Ahluwalia's] mental health disabilities and lost income earning potential;

b. **$50,000** in aggravated damages due to the overall pattern of coercion and control, breach of trust, and for the post-separation conduct of [Mr. Ahluwalia]; and

c. **$50,000** in punitive damages as condemnation for [Mr. Ahluwalia's] conduct.

[245] I would exercise this Court's power under s. 45 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, to give the order the trial judge should have given had she properly characterized the tort of intimate partner violence under the principles established in these reasons (see, e.g., *Laferrière v. Lawson*, [1991] 1 S.C.R. 541, and G. Ragan et al., *Supreme Court of Canada Practice 2025* (2025), at § SCA 46:1).

[246] The Court of Appeal has rejected the award of $50,000 in punitive damages and therefore para. 15(c) of the order of the Superior Court regarding these damages is no longer in effect. However, two modifications to para. 15 of the trial order must be made.

[247] First, the trial judge's reference to "damages for family violence" should be changed to reflect that damages are awarded, specifically, for the "tort of intimate partner violence".

[248] Second, the distribution of compensatory and aggravated damages awarded by the trial judge should be modified and the order should state: "$100,000 in compensatory damages in relation to the tort of intimate partner violence". The conduct the trial judge considered warranting aggravated damages falls within the scope of the

tort of intimate partner violence as defined in these reasons. It is subject to compensation based on the principle of *restitutio in integrum* rather than as aggravated damages to compensate malicious conduct that would not otherwise be covered. I accept that in other circumstances, a dignity interest may merit compensation through aggravated damages (see J. Berryman, "Reconceptualizing Aggravated Damages: Recognizing the Dignitary Interest and Referential Loss" (2004), 41 *San Diego L. Rev.* 1521). In this case, however, the harm experienced by Ms. Ahluwalia from coercive control, including that associated with her dignity, autonomy, and equality should fall fully under general compensatory damages for the tortious conduct of intimate partner violence. Had the trial judge properly characterized the tort of intimate partner violence, the resulting harm would have been compensable as general compensatory damages, not as aggravated damages. The trial judge's order should therefore be modified to reflect that the entire award of $100,000 is included under the head of general compensatory damages. Paragraph 15 of the trial order should be replaced with the following: "The Applicant Father shall pay to the Respondent Mother $100,000 in general compensatory damages in relation to the tort of intimate partner violence".

[249] I would follow the Court of Appeal and confirm all of the trial judge's other conclusions on the consequences of divorce that were not in issue before this Court and that were not disturbed on appeal. I would not disturb the trial judge's order to award Ms. Ahluwalia $20,000 costs in first instance. I note that neither party asked this Court to vary that order and, despite its differing views on liability, the Court of Appeal left the trial judge's order on costs untouched. The parties did not request costs in this Court. Therefore, the appeal should be allowed, in part, without any order as to costs.

The following are the reasons delivered by

KARAKATSANIS J. —

[250] Canada continues to face a crisis of intimate partner violence. This violence inflicts significant physical, sexual, and psychological harm on its victims — harm that is qualitatively different from violence inflicted outside an intimate relationship. The harms of intimate partner violence are far-reaching, with effects on the victims' children, their families, and Canadian society more broadly.

[251] Canadian law has recognized the threat of intimate partner violence, and crafted novel responses to address this insidious form of abuse. Our criminal and family law have evolved to recognize this unique form of violence both in statutory amendments and in our jurisprudence. But despite these legal reforms and other societal shifts to respond to the crisis in recent years, intimate partner violence remains at epidemic levels, inflicting severe and disproportionate physical, psychological, and economic harm on women and girls.[1] This appeal presents an opportunity for the common law of tort to respond to this crisis of intimate partner violence.

[252] To do so, I would recognize a novel tort of "intimate partner violence". Victims of intimate partner violence must demonstrate: (1) the wrongdoing arose in an intimate partnership or its aftermath; (2) the defendant intentionally engaged in abusive

[1] See Statistics Canada, "Trends in police-reported family violence and intimate partner violence in Canada, 2024", in The Daily, October 28, 2025 (online); see also V. Nikulina and C. C. Brumbaugh, "Posttraumatic Stress Disorder and Domestic Violence", in T. K. Shackelford, ed., *Encyclopedia of Domestic Violence* (2024); Statistics Canada, *Family violence in Canada: A statistical profile, 2019* (March 2021), section 3; H. Waters et al., *The Economic Dimensions of Interpersonal Violence* (2004).

conduct; and (3) the conduct, on an objective basis, constituted coercive control, or violence that caused their intimate partner physical or psychological harm.

[253] At the outset, I emphasize that I strongly agree with Justice Kasirer's reasons on the necessity of recognizing a new tort of intimate partner violence. Because the wrongdoing and harms associated with intimate partner violence are profound, distinctive, and not adequately captured by existing torts, the recognition of a new tort is necessary.

[254] Although the first two elements of my proposed tort of "intimate partner violence" align with the tort recognized by Justice Kasirer, I differ on the third element. The wrongdoing and harms associated with intimate partner violence extend beyond coercive control. Coercive control is an insidious form of intimate partner violence, and captures conduct that might not otherwise be tortious. I fully agree it is necessary to capture such conduct in this new tort. But unlike my colleague, I would not *limit* recovery under the tort of intimate partner violence to coercive control. I would also include any act or threat of violence in an intimate partner relationship that causes physical or psychological harm. Limiting the tort to coercive control does not reflect the full lived realities of vulnerable survivors of intimate partner violence.

[255] My reasons for including all acts and threats of physical and psychological violence in this new tort are twofold. First, tort law promises recovery for the full range of harms suffered by victims of wrongful conduct by an intimate partner. Second, plaintiffs who will rely on this new tort of intimate partner violence will often be vulnerable and self-represented. It is overly burdensome to require such plaintiffs to

navigate a patchwork of torts, or the complex concept of coercive control, to fully capture the diverse harms they have experienced.

[256] A "one-stop shop" tort in cases of intimate partner violence is most consistent with the underlying purposes of tort law and would promote access to justice. I would therefore recognize a tort of intimate partner violence with elements that permit but do not require victims to prove that the physical or psychological harm they experience constitutes coercive control. Violence in an intimate partner context represents a distinct form of wrongdoing and imposes qualitatively different harms. These harms merit higher damages awards, and the wrongdoing deserves judicial condemnation under a distinct label from existing torts.

[257] While violence between strangers may be captured by existing torts such as battery and assault, violence between intimate partners is abuse from someone with whom you choose to share your intimate life. Violence in this vulnerable context is a breach of trust, undermining personal dignity and safety, threatening the relationship itself, and giving rise to much more profound consequences for victims. Not only is their bodily integrity affected, but their sense of security in their own home or personal life may be compromised, often leaving them with no other place to go. Beyond that, they must grapple with the psychological effects of the breach of trust in the relationship, the financial risks associated with ending it, and any effects on children or other family members. Violence in the context of an intimate partnership is a unique wrong that causes harm that is fundamentally different than that experienced between strangers.

[258] The common law should acknowledge this distinctive wrongdoing and elevated harm with a new tort that includes all acts of violence. This tort must be rooted in the lived realities of survivors of intimate partner violence, not limited by academic writings and lower court precedents.

I. The Purposes and History of Tort Law Support Recognizing a Broad Tort That Entirely Fills the Gap in the Law Revealed by Intimate Partner Violence

[259] This is the first case where a majority of this Court has outlined a general framework to recognize novel common law torts.[2] In considering the scope of this new tort of intimate partner violence, I draw from the principles underlying tort law. As I shall explain, the purposes and history of tort law support a permissive approach to recognizing novel torts where facts reveal a gap in the existing law.

A. *Tort Law Exists to Provide Full Recovery for Wrongfully Inflicted Harm*

[260] This Court has endorsed the "corrective justice" model as the primary "basis for recovery in tort" (*Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, [2020] 2 S.C.R. 420, at para. 34; see also *Clements v. Clements*, 2012 SCC 32, [2012] 2 S.C.R. 181, at para. 7). This model recognizes on a normative level that plaintiffs who suffer injury to a legal right are entitled to redress and compensation from any person or persons who wrongfully caused that harm (E. J. Weinrib, "Restitutionary Damages as Corrective Justice" (2000), 1 *Theo. Inq. L.* 1; *R. in right of Canada v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205, at p. 224; *Nevsun Resources Ltd. v.*

[2] I note the parties and interveners in this case largely invoked the framework from the dissenting opinion of Brown and Rowe JJ. in *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, [2020] 1 S.C.R. 166, at para. 236. In turn, that dissent relied on Wilson J.'s dissent in *Frame v. Smith*, [1987] 2 S.C.R. 99.

Araya, 2020 SCC 5, [2020] 1 S.C.R. 166, at para. 120). Recognized legal rights include a person's bodily and psychological integrity, property, and reputation (*1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35, [2020] 3 S.C.R. 504, at para. 18; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at para. 121).

[261] Not all conduct that harms a legal right gives rise to liability in tort. Key to the corrective justice model is the concept of wrongfulness (A. Ripstein, *Private Wrongs* (2016), at pp. 43-44). As shown by the torts of battery and assault, unjustified acts and threats of violence have always been treated by the common law as normatively wrongful, giving rise to liability.

[262] Corrective justice supports a permissive approach to recognizing torts. Whenever a plaintiff suffers harm to a right, caused by a defendant's wrongful conduct, corrective justice supports ordering a remedy. If the nature of that harm is not captured by an existing tort, that is grounds to recognize a new tort to fill the gap and correct the injustice.

[263] A permissive approach to recognizing new torts also provides other incidental benefits — vindicating plaintiff's rights, deterring possible wrongdoers, and educating the public about what conduct is and is not acceptable (*Dobson (Litigation Guardian of) v. Dobson*, [1999] 2 S.C.R. 753, at para. 48; *Hall v. Hebert*, [1993] 2 S.C.R. 159, per Cory J.; P. H. Osborne, *The Law of Torts* (6th ed. 2020), at pp. 13-17).

[264] When considering the scope of the gap to be filled, courts must follow the principle that tort law is fundamentally relational (E. J. Weinrib, *The Idea of Private Law* (2012), at pp. 42-43). Many torts developed in stranger-on-stranger relationships,

reflecting duties all persons owe to society at large (e.g., battery). Other torts reflect more specific duties that only arise in closer relationships (e.g., negligent misrepresentation and malicious prosecution). When courts consider harms arising in particularly close relationships, they must consider that closeness when naming and crafting the scope of an appropriate tort.

[265] Common law history reinforces that torts have always been conceived as a broad basis for recovery, and that novelty is not a bar to recognizing new torts. By definition, every tort that exists today was once a novel tort. In 1762, Lord Chief Justice Pratt responded to an objection to a proposed new tort based on novelty: "I wish never to hear this objection again. This action is for a tort: torts are infinitely various, not limited or confined, for there is nothing in nature but may be an instrument of mischief . . ." (*Chapman v. Pickersgill* (1762), 2 Wils. K.B. 145, 95 E.R. 734 (C.B.), at p. 734 (emphasis added)). The subsequent centuries of jurisprudence repeatedly reiterate that tort law will expand to provide a remedy whenever a plaintiff is wrongfully harmed by a defendant (see *Pasley v. Freeman* (1789), 3 T.R. 51, 100 E.R. 450; *R. v. Commissioners of Sewers for Pagham, Sussex* (1828), 8 B. & C. 355, 108 E.R. 1075; *Skinner & Co. v. Shew & Co.*, [1893] 1 Ch. 413; *Sidaway v. Gov. of Bethlem Royal Hospital*, [1985] 1 A.C. 871 (H.L.), at pp. 884-85; see also *Aikens v. Wisconsin*, 195 U.S. 194 (1904), at p. 204; Sir P. H. Winfield, *A Text-Book of the Law of Tort* (5th ed. 1950), at p. 14; Sir F. Pollock, *The Law of Torts: A Treatise on the Principles of Obligations Arising from Civil Wrongs in the Common Law* (13th ed. 1929), at pp. 21-23).

[266] In *Candler v. Crane, Christmas & Co.*, [1951] 2 K.B. 164 (C.A.), Lord Denning emphasized the importance of recognizing novel claims to the vitality of the common law. He rejected an argument against a novel form of tort liability, stating "[t]his argument about the novelty of the action does not appeal to me in the least. It has been put forward in all the great cases which have been milestones of progress in our law, and it has always, or nearly always, been rejected. . . . It was fortunate for the common law that the progressive view prevailed" (p. 178).

[267] History thus reinforces a broad, permissive approach to the recognition of novel torts. Mere novelty is not a reason to refuse to recognize liability in tort. Nor need courts wait for a societal or academic consensus that a new tort would be a good idea. Courts may take wisdom from academics and fellow jurists, but the common law judge's duty is to provide relief to plaintiffs who have proven unjustified harm to their rights, even if that means charting a new legal path.

[268] In sum, the default common law rule is that where a court concludes that a plaintiff has suffered harm caused by a defendant's wrongful conduct, then that defendant is liable to that plaintiff in tort. Where existing torts do not provide an adequate basis to address the wrongdoing and correct the proven harm, then courts should recognize a new tort to ensure full recovery. The new tort should be as broad as needed to correct the injustice in this unique context.

[269] After a court has identified a gap in the common law requiring the creation of a new tort, it should then adopt a broad approach to determining its scope, attentive

to the facts of the case before it. This ensures that the new tort captures the full extent of harm that could be associated with the tortious conduct.

B. *The New Tort of Intimate Partner Violence Should Include, but Not Be Limited to, Coercive Control*

[270] Applying this methodology to this case, there is a clear gap in how tort law responds to harms in intimate partner relationships.

[271] When people enter intimate partnerships, they agree to share their private lives. If one partner commits violence against the other, it is fundamentally different from violence perpetrated by a stranger (see, generally, C. Byrne Hessick, "Violence Between Lovers, Strangers, and Friends" (2007), 85 *Wash. U.L. Rev.* 343; I.F., Provincial Association of Transition Houses and Services of Saskatchewan, at para. 15; I.F., Barbra Schlifer Commemorative Clinic, at para. 11; I.F., Attorney General of British Columbia, at para. 21; I.F., Luke's Place Support and Resource Centre for Women and Children, at para. 15). The act becomes a breach of trust, a violation of a personal relationship — and often private space — undermining family, financial or personal living arrangements, inflicting unique psychological harm. An assault by an intimate partner is fundamentally different from assaults by others. For this reason, recognized forms of wrongful conduct and harm are qualitatively distinct in intimate partnerships. The specific relationship between intimate partners justifies liability under a distinct tort.

[272] Violence and threats of violence between intimate partners that would be caught under the existing torts of battery and assault should be captured under this new

tort, even without proof of coercive control. The qualitatively different wrongdoing and harms at stake justify higher damages and judicial condemnation under the label "intimate partner violence".

[273] Justice Kasirer acknowledges that there is a gap in how tort law responds to intimate partner violence (para. 138). But he says that to fill that gap beyond coercive control would be contrary to the principle of incrementalism (paras. 72 and 202). I respectfully disagree. Incrementalism does not mean taking the narrowest possible path. This Court can and should recognize a tort that provides relief for the qualitatively distinct harm inherent in intimate partner violence, in all its forms. This is the gap that the scope of the new tort must address. The full extent of the gap should not be ignored solely because existing torts such as battery and assault could provide recovery in this case, leaving the unique nature of the wrongdoing and harm to be reflected in aggravated damages.

[274] To that end, I see no reason why the new tort of intimate partner violence should be limited to coercive control. Rather, this tort should be broad enough to capture the unique wrongfulness and elevated harm that flows from violence in intimate partner relationships. While I agree that coercive control is a form of intimate partner violence, that category does not capture its full extent. Not all intimate partner relationships are organized around sustained domination, and the law must remain attentive to the many forms that intimate partner violence can take (see, generally, J. B. Kelly and M. P. Johnson, "Differentiation among types of intimate partner violence: Research update and implications for interventions" (2008), 46 *Fam. Ct. Rev.* 476). Single or episodic acts of physical violence, threats, or sexual violence may occur

independently of coercive control. These acts can be profoundly injurious on their own terms, even in relationships that do not show the hallmarks of coercive control. Accordingly, while coercive control is a helpful concept for identifying and understanding many forms of intimate partner abuse, it is not the sole or definitive marker of intimate partner violence.

[275] Coercive control is a relatively young concept. Researcher Evan Stark developed the concept in 2007 to capture the more insidious and invisible forms of harm that can occur in intimate partner relationships (*Coercive Control: How Men Entrap Women in Personal Life* (2007)). Coercive control is a useful model for identifying cumulative and discrete acts of abuse that on their own may appear harmless but in the broader context of domination and control within the relationship are much more sinister. It helps us identify and reframe our understanding of abusive acts that may on their face seem relatively benign. However, coercive control as a mode of framing abusive acts does not completely subsume the multiple forms of harm perpetrated during an intimate partnership or its aftermath. Coercive control is merely one form of violence that can occur in a relationship.

[276] To the extent that coercive control captures wrongful conduct that is not currently caught by existing torts, it brings value to the development of this new tort of intimate partner violence. But confining the new tort exclusively to coercive control excludes well-recognized forms of violence that can occur in a relationship that should not require added evidentiary requirements of demonstrating that they are aimed at controlling or restricting the victims.

[277] The law's response to the crisis of intimate partner violence in Canada should account for both coercion and discrete acts or threats of violence, recognizing that each represents a distinct route through which individuals may inflict serious harm on an intimate partner.

II. Access to Justice Requires a Broader Tort of Intimate Partner Violence

[278] In pursuing corrective justice, courts strive for "socially useful" results (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2 S.C.R. 114, at para. 16). Promoting access to justice is one such socially useful objective. This reinforces the need for a broader, less complicated tort that better responds to the actual lived realities of individuals who are victimized through intimate partner violence.

A. *A One-Stop Shop Tort Best Achieves Access to Justice for Victims of Intimate Partner Violence*

[279] Intimate partner violence can affect a plaintiff's financial ability to bring or continue a legal claim against their abuser. Combined with the high cost of litigation, access to justice can be elusive in this field (see also *Michel v. Graydon*, 2020 SCC 24, [2020] 2 S.C.R. 763, at paras. 96 and 100, per Martin J.). By necessity, self-representation is common in the family law sphere. Allowing plaintiffs to access a one-stop shop tort to remedy all forms of violence in an intimate partner relationship, reduces complexity, increases litigation efficiency, and supports better access to justice.

[280] A one-stop shop tort for intimate partner violence is simpler for plaintiffs to understand when pleading their case. It would be easier for other parties and trial judges to apply. Simplicity and concision are access to justice virtues. Plaintiffs seeking redress for intimate partner violence should not have to seek relief under the patchwork of existing torts, each with varying technical confines. This patchwork approach inhibits full recovery, especially for self-represented plaintiffs (D. Sowter and J. Koshan, "'Weaponizing' The Tort of Family Violence? Myths, Stereotypes, Lawyers' Ethics and Access to Justice" (2024), 40 *Windsor Y.B. Access Just.* 311, at p. 342). Instead of requiring adapted torts of battery and assault to supplement a tort limited to coercive control, I seek to centre the needs of vulnerable plaintiffs who will rely on this tort of intimate partner violence by reducing barriers in their pursuit of justice. To achieve this, I would move beyond the patchwork to a single tort of intimate partner violence that captures the distinct nature of this harm. The scope of this new tort should reflect the full extent of the wrongdoing and injury of intimate partner violence.

[281] Further, the inherent complexity of coercive control as a concept may deter plaintiffs from seeking the compensation they are due. Plaintiffs who have been physically assaulted by an intimate partner should not have to rely on interference with their "dignity, autonomy, and equality", arising from "attempts at domination or control" (Kasirer J.'s reasons, at para. 193). Requiring such plaintiffs — many of whom will be self-represented victims of violence — to navigate these complicated concepts to recover under this new tort does not promote access to justice. It fails to grapple with the lived realities of those who experience intimate partner violence and risks reinforcing barriers that inhibit their ability to gain redress.

[282] In sum, whether an individual is subjected to coercive control, or other forms of violence causing them physical or psychological harm, it is the context of the intimate partnership which justifies distinct judicial recognition and markedly higher damages than available under the existing torts available between strangers.

B. *The New Tort Should Allow Simple Recovery for Discrete Instances of Intimate Partner Violence*

[283] Including acts of violence that caused physical or psychological harm in the scope of the new tort allows victims of intimate partner violence to plead and argue all instances of that violence under one tort. They would not need to research the elements of separate torts such as of assault, battery, or intentional infliction of emotional distress. Nor need they wonder whether discrete instances of violence qualify as "coercive control".

[284] I agree that a single wrongful act, committed by one intimate partner on the other *may*, in some circumstances, qualify as coercive control under my colleague's tort (para. 13). However, as Justice Kasirer makes clear, this singular act of violence must still fit within the concept of coercive control. It must be shown to constitute "conduct" through which "one intimate partner coerces and controls the other, thus depriving them of their autonomy" (para. 120). This is not a one-stop shop tort. Instead, the plaintiff must fit the act of violence within the concept of coercive control and show the abuse they suffered "ha[d] the effect of subordinating" themselves to their abuser (para. 120).

[285] That said, I agree that the facts as pleaded and proven in this case do speak to a campaign of coercive control, punctuated by acts and threats of physical violence. I agree that the new tort of intimate partner violence must recognize coercive control, but I disagree with using it as a limiting concept. Indeed, I would not preclude that the future "anvil of concrete cases" with different facts may show this tort should also capture harm to other legal rights, or non-violent wrongdoing falling short of coercive control (see, generally, *Babstock*, at para. 55, citing *Attorney General v. Blake*, [2001] 1 A.C. 268 (H.L.), at p. 291).

C. *Any Risk of "Weaponization" Does Not Justify a Tort Focused Only on Coercive Control*

[286] Finally, I recognize but am unconvinced by the argument that a broader tort could be weaponized by perpetrators of intimate partner violence (see, generally, Sowter and Koshan). The possibility of weaponization of this tort in a small number of cases is not reason to deny recovery to individuals who have experienced intimate partner violence. Nor do I see how any risk of weaponization of a broader tort would be greater than the current risk of weaponization under existing torts. And damages, whether under a traditional tort, or this new tort, will always depend on the factual context.

[287] In any event, the tort of intimate partner violence excludes actions taken by an individual to protect themselves or their children from violence. Such protective behaviours, which include a partner's decision to relocate to put distance between their child and their abuser, a decision to refuse the abusive parent additional parenting time, and disclosing instances of intimate partner violence, among others, are not captured

by this tort. These behaviours are not violence. And defendants always have access to the full array of tort law defences, including self-defence (see, generally, A. M. Linden et al., *Canadian Tort Law* (13th ed. 2025), at §2.05). Trial judges must properly identify these dynamics and ensure protective behaviours are not inappropriately captured under this broader tort.

III. Conclusion

[288] I end where I began. This appeal provided an opportunity for the common law of tort to respond to the Canadian crisis of intimate partner violence. This case called for the just recognition of the lived experience of victims of intimate partner violence. This Court's recognition of a new tort of intimate partner violence answers that call. But while I agree that coercive control must be recognized as a unique form of harm requiring redress under tort law, the new tort should also include acts of violence by an intimate partner that cause physical or psychological harm. I would not limit this tort to only some forms of intimate partner violence. I would respond to this crisis by recognizing a simple, comprehensive, and corrective tort of intimate partner violence.

[289] I concur in the result: the appeal should be allowed in part.

The reasons of Côté, Rowe and Jamal JJ. were delivered by

JAMAL J. —

I. Introduction

[290] Any discussion of intimate partner violence in Canada must begin by confronting its staggering human toll. In 2024 alone, over 128,000 individuals in Canada were victims of such violence. Women and girls were affected at rates three and a half times higher than men and boys, underscoring the deeply gendered nature of this scourge (Statistics Canada, "Trends in police-reported family violence and intimate partner violence in Canada, 2024", in The Daily, October 28, 2025 (online)). This Court has long recognized that women in intimate partner relationships face disproportionate vulnerability that creates lived experiences of fear, coercion, and trauma (*R. v. Lavallee*, [1990] 1 S.C.R. 852, at p. 872; *Michel v. Graydon*, 2020 SCC 24, [2020] 2 S.C.R. 763, at para. 95; *R. v. Stairs*, 2022 SCC 11, [2022] 1 S.C.R. 169, at paras. 91-94; *R. v. Brown*, 2022 SCC 18, [2022] 1 S.C.R. 374, at para. 165; *R. v. Kirkpatrick*, 2022 SCC 33, [2022] 2 S.C.R. 480, at paras. 61-62). There is no dispute that intimate partner violence can involve not only physical and sexual abuse, but also other forms of abuse, including coercive control.

[291] The epidemic of intimate partner violence in Canada demands a response from the justice system that is both compassionate and principled. As part of that response, intimate partner violence is actionable in tort at common law. Courts have provided meaningful remedies for victims by adapting and applying torts like assault, battery, and intentional infliction of emotional distress and by taking a flexible approach to awarding aggravated damages. The evolution of the common law has accelerated in recent years, particularly as more women have joined the judiciary. As this evolution continues, courts must remain vigilant in shedding gender stereotypes from the law and in ensuring that plaintiffs receive a just remedy for the injuries they have suffered.

[292] The appellant, Ms. Kuldeep Kaur Ahluwalia, suffered intimate partner violence throughout her marriage at the hands of her then-husband, the respondent, Mr. Amrit Pal Singh Ahluwalia. During the divorce proceedings, Ms. Ahluwalia claimed $100,000 in damages for physical and mental abuse. The trial judge awarded this amount in compensatory and aggravated damages (2022 ONSC 1303, 161 O.R. (3d) 360). Although the trial judge found Mr. Ahluwalia liable for $100,000 under the existing torts of assault, battery, and intentional infliction of emotional distress, she also concluded that the law should recognize a new tort of family violence. The Court of Appeal upheld the award of $100,000 in damages under the existing torts but declined to recognize a new tort (2023 ONCA 476, 167 O.R. (3d) 561).

[293] Before this Court, the parties agree that Ms. Ahluwalia is entitled to $100,000 in compensatory and aggravated damages under existing torts. Neither party seeks to disturb the trial judge's conclusion on this point. The narrow issue is whether the law should recognize a new tort of family violence in the circumstances of this case.

[294] This Court should unequivocally endorse the view that Ms. Ahluwalia, and individuals in similar circumstances, are owed just remedies under the torts of assault, battery, and intentional infliction of emotional distress, which must be applied sensitively and generously in cases of intimate partner violence. Existing torts collectively protect bodily integrity, psychological security, and personal autonomy. Recent jurisprudence shows that courts now routinely apply these and other torts in the intimate partner context and award substantial general, aggravated, and punitive damages to compensate for the unique relational harms encountered. Decisions that misunderstand or undercompensate for these harms should not be followed.

[295] As the trial judge was entitled to award Ms. Ahluwalia the full compensation she seeks under existing law, this is not a proper case in which to recognize a new tort. The common law evolves incrementally through concrete disputes, not through abstract law reform. As a matter of judicial restraint, courts generally avoid deciding issues that have no practical effect on the parties before them. Restraint is particularly important when considering the recognition of a wholly new tort, which, as a previously unrecognized ground of liability under private law, is inherently a significant change in the common law. Courts should therefore decline to create a new tort when existing torts already fully compensate the plaintiff.

[296] Recognizing a new tort when it is not needed to secure a remedy for the plaintiff is unprecedented. As Sharpe J.A. warned in *Jones v. Tsige*, 2012 ONCA 32, 108 O.R. (3d) 241, although courts considering the recognition of a new tort must not ignore "facts that cry out for a remedy", courts should restrict themselves "to the particular issues posed by the facts of the case before [them] and not attempt to decide more than is strictly necessary to decide that case" (paras. 21 and 69). A cause of action that overshoots the actual dispute before the court "would not only over-reach what is necessary to resolve th[e] case, but could also amount to an unmanageable legal proposition that would . . . breed confusion and uncertainty" (para. 21). Nothing prevents courts from considering the wisdom of creating a new tort in a future case when it would actually bear on the outcome.

[297] I would add that the manner in which this case has worked its way through the courts makes it a particularly poor vehicle for making significant legal change. The trial judge raised the creation of a new tort on her own initiative and after the close of

evidence. Even after the trial judge had raised the issue, Ms. Ahluwalia never asked the court to create a new tort of family violence and instead relied on cases involving existing torts and the definition of family violence under the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.). Although Mr. Ahluwalia objected to the manner in which the trial judge raised the issue, the trial judge nevertheless proceeded to recognize a new tort, despite concluding that full compensation was already available under existing torts. A majority of this Court now proposes to set aside the trial judge's conclusion that Ms. Ahluwalia was entitled to full compensation under those existing torts, even though interfering with that conclusion is beyond the scope of this appeal, was never raised by any party, and concerns an issue on which the parties have had no opportunity to be heard. After doing so, my colleagues each propose to recognize a new tort different from those created by the trial judge and advanced by Ms. Ahluwalia on appeal, as well as from each other. In my respectful view, the recognition of a new tort in this case lacks a stable basis in the jurisprudence, the facts, and Ms. Ahluwalia's claim.

[298] Even if this were an appropriate case in which to recognize a new tort, I would hesitate to recognize either of the new torts proposed by my colleagues. In my respectful view, lower courts will have great difficulty applying the unprecedented elements of their new torts. This may erect barriers for access to justice and complicate the ability of victims of intimate partner violence to receive just compensation. Applying the existing torts flexibly, as is now routinely done by lower courts, provides a clearer and simpler basis for compensation in cases like the present.

[299] Accordingly, I would not disturb the conclusion of the courts below that Ms. Ahluwalia is owed full compensation for intimate partner violence under existing torts. I would therefore dismiss the appeal.

II. Discussion

[300] I will proceed in three parts. First, I will explain why a judge should not create a new tort where full compensation is available under existing torts. Second, I will show that the existing torts provide full compensation for Ms. Ahluwalia, such that there is no need for this Court to consider creating a new tort in this case. Third, I will discuss why, even if it were appropriate to consider creating a new tort, the new torts proposed by my colleagues will create significant complications for plaintiffs seeking compensation for intimate partner violence.

A. *A Judge Should Not Create a New Tort Where Full Compensation Is Available Under Existing Torts*

[301] Under the common law method of adjudication, a judge must apply the existing law to the facts of the case. As Lord Hodge of the Supreme Court of the United Kingdom has explained, "[j]udicial decisions should be justified by the law as it is. The judge is to decide cases, when he or she can, using existing legal principles. Changes to the law should be derived from existing legal materials by applying established principles and legal values in new contexts" (P. Hodge, "The Scope of Judicial Law-Making in the Common Law Tradition" (2020), 84 *Rabel J.* 211, at p. 221). On this view, which I share, the development of the common law is incremental and fact-driven; it does not involve freestanding law reform by the judiciary.

[302] Although a judge may make incremental changes to the common law when justified by the facts of the case, they cannot "invent a situation" merely to change existing rules and principles; they must instead "await an appropriate litigation for th[at] purpose" (G. H. L. Fridman, *Torts: A Guide for the Perplexed* (2017), at p. 41). The common law grows and adapts in concrete disputes between litigants, not in response to abstract policy debates (see Lord Reed, *Time Present and Time Past: Legal Development and Legal Tradition in the Common Law — The Neill Law Lecture*, February 25, 2022 (online), at pp. 1-2; S. Beswick, "The Cause of Action in *Ahluwalia v. Ahluwalia*" (2025), 55 *Advocates' Q.* 429, at p. 437; C. Mathen, *Courts Without Cases: The Law and Politics of Advisory Opinions* (2019), at pp. 13 and 15-16). Justice Sharpe has aptly noted that "[p]recedent-making decisions of the common law courts turn on their facts" (R. J. Sharpe, *Good Judgment: Making Judicial Decisions* (2018), at p. 55).

[303] Radical changes to the common law risk undermining the rule of law. As Lord Bingham explained:

> . . . it is one thing to move the law a little further along a line on which it is already moving, or to adapt it to accord with modern views and practices; it is quite another to seek to recast the law in a radically innovative or adventurous way, because that is to make it uncertain and unpredictable, features which are the antithesis of the rule of law.
>
> (T. Bingham, *The Rule of Law* (2010), at pp. 45-46)

[304] Justice Dickson (as he then was) affirmed the same basic points regarding the judicial role to develop the common law based on the facts of the case:

> A legal rule is a highly abstract thing, but the greatest strength of the common law tradition is that the rule is born in the wholly concrete facts of a dispute between litigants. This is a point sometimes overlooked by those who urge the courts towards a more embracing role in effecting social change. The courts are limited to the issues brought to them by litigants and to the facts developed by the litigants and their counsel in the courts of first instance. The changes we develop must necessarily come from the cases which come before us and thus we, the judges, of necessity, proceed in a somewhat piecemeal fashion. Legislatures, on the other hand, have the ability to engage in systematic overall reform or, as it were, to take a more global bite.
>
> A legal rule is a decision as between litigants. The rule is from the first a blend of concrete experience and abstract reason. The utility and amplitude of a rule will depend on the interplay between the concrete and abstract elements in which it had its birth.
>
> (B. Dickson, "The Role and Function of Judges" (1980), 14 *Gazette* 138, at pp. 154-55)

[305] Consistent with these principles, courts generally decline to decide an issue that has no impact on the court's order, and thus has no practical effect for the parties (see *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, at p. 353; *R. v. Smith*, 2004 SCC 14, [2004] 1 S.C.R. 385, at paras. 32-33). Similarly, when a court can avoid pronouncing on a significant legal controversy that is "uncertain and fraught" and rely instead on "uncontroversial" alternative grounds to achieve the same outcome, it should generally do so as a matter of judicial restraint (*R. v. Bouvette*, 2025 SCC 18, at para. 94; see *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97, at para. 6; *Scott v. Golden Oaks Enterprises Inc.*, 2024 SCC 32, at para. 99).

[306] The need for judicial restraint is especially pronounced when a court is asked to recognize a wholly new tort. That exercise is subject to clear preconditions identified in the jurisprudence (see *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5,

[2020] 1 S.C.R. 166, at para. 237, per Brown and Rowe JJ., dissenting in part; see also *Merrifield v. Canada (Attorney General)*, 2019 ONCA 205, 145 O.R. (3d) 494, at paras. 24-42). Among them is the principle that courts should not recognize a new tort when adequate alternative remedies for the wrong already exist (see *Nevsun*, at paras. 237-40; *Merrifield*, at para. 42).

[307] Accordingly, when existing torts already address the wrong targeted by a proposed new tort, courts will decline to recognize such a tort (see *Nevsun*, at para. 239, citing *Non-Marine Underwriters, Lloyd's of London v. Scalera*, 2000 SCC 24, [2000] 1 S.C.R. 551; *McLean v. McLean*, 2019 SKCA 15, [2019] 5 W.W.R. 67, at paras. 103-5; *Merrifield*, at para. 42; *6165347 Manitoba Inc. v. Jenna Vandal*, 2019 MBQB 69, at paras. 91 and 100). For example, in *Scalera*, McLachlin J. (as she then was) observed that courts had declined to create a new tort of sexual battery, and she similarly declined to create special rules for civil claims of sexual battery on the facts of the case (para. 27). Instead, she noted that "[t]he sexual aspects of the claim go only to damages" (para. 27). Likewise, a majority in *Nevsun* stated that while damages may be inadequate to address violations of customary international law norms, which are "of a more public nature", it confirmed that damages can "address the extent and seriousness of harm arising from civil wrongs" (paras. 124 and 126). The Court did not give a definitive answer on this point, however, because it was only considering a motion to strike. It did not actually recognize a new tort.

[308] In *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6, this Court addressed a tort claim for incestuous sexual abuse under the existing torts of assault and battery and declined to recognize a new tort of incest. The Court recognized that "[a]ssault and battery can

only serve as a crude legal description of incest", and stated that "in order to understand fully the fundamental elements of the tort in this context", it had to "examine the unique and complex nature of incestuous abuse and its consequential harms" (pp. 24-26). The Court rightly recognized that incestuous sexual abuse of a child is qualitatively distinct from other forms of battery like a punch thrown by a stranger, and that this was an essential consideration in resolving the claim. But this did not require the creation of a new tort.

[309] In contrast, my colleagues conclude that intimate partner violence is "qualitatively different" from other forms of violence and therefore requires the recognition of a new tort in this case (Kasirer J.'s reasons, at paras. 8, 106, 140, 149 and 160; Karakatsanis J.'s reasons, at paras. 256-7). In their view, the "inherent trust" and "mutual dependency" that characterizes intimate partner relationships distinguish intimate partners from strangers (Kasirer J.'s reasons, at para. 106), and give rise to a "distinct wrong" to "dignity, autonomy, and equality" (paras. 127 and 181; see also paras. 106 and 140). Yet no authority is cited for the proposition that the nature of the relationship between the tortfeasor and the victim renders existing torts inadequate, or that a new tort should be recognized simply because the injuries can be characterized as qualitatively distinct.

[310] The restraint in the jurisprudence to date reflects the reality that new torts provide new grounds for liability under private law. As this Court has observed in the negligence context, recognizing a new ground of liability risks significant impacts "on other legal obligations, the legal system and society more generally", and must therefore be closely scrutinized (see *Cooper v. Hobart*, 2001 SCC 79, [2001] 3 S.C.R.

537, at para. 37; see also *Nelson (City) v. Marchi*, 2021 SCC 41, [2021] 3 S.C.R. 55, at para. 18; *Hercules Managements Ltd. v. Ernst & Young*, [1997] 2 S.C.R. 165). "Consistent with the incremental and analogical approach of the common law", new private law duties are framed to reflect the facts of the case and do not extend beyond the situations those facts disclose (*A.A. v. The Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle*, [2026] HCA 2, at para. 300, per Gordon J.). Recognizing a new tort can entail a "radical shift" in the law that is better left to a legislature (*Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, at para. 77). Accordingly, examples where new torts have been recognized are "rare" (*Nevsun*, at para. 243).

[311] The appropriate exercise of restraint in recognizing new torts is best demonstrated by *Jones*, the leading case on the recognition of a new tort. The Court of Appeal had to decide whether Ontario law recognized a civil action for damages for violating a person's privacy. The defendant, a bank employee, had surreptitiously accessed the plaintiff's banking records 174 times over four years, contrary to the bank's confidentiality policies. Because the defendant had not published, distributed, or misused the information, the legal issue was whether the mere invasion of informational privacy itself justified recognition of a distinct cause of action. Sharpe J.A., writing for the court, drew on the American Law Institute *Restatement of the Law Second, Torts 2d* (2010) and the evolution of privacy protections in the common law, *Canadian Charter of Rights and Freedoms* jurisprudence, and comparative law, before recognizing a new tort of intrusion upon seclusion. He concluded that although the values underlying such a tort were entrenched in Canadian law, there was no remedial vehicle capable of addressing the harm on these facts. As he explained, the court was

"presented . . . with facts that cry out for a remedy" (para. 69). Internal disciplinary measures imposed by the bank did "not respond directly to the wrong that had been done"; Ontario law "would be sadly deficient" if the plaintiff were turned away without a civil remedy (para. 69).

[312] At the same time, Sharpe J.A. declined to recognize other related privacy torts, reflected in the same scholarship and *Restatement*, that did not speak directly to Ms. Jones' claim. Echoing the principle that common law developments must be incremental and tied to the facts before the court, he emphasized that "a court of law" must "restrict [itself] to the particular issues posed by the facts of the case before [it] and not attempt to decide more than is strictly necessary" (para. 21). Addressing causes of action "of any wider breadth" would "over-reach what is necessary to resolve this case" and risk creating "an unmanageable legal proposition that would . . . breed confusion and uncertainty" (para. 21).

[313] Writing extrajudicially, Sharpe J.A. explained the common law reasoning process involved in *Jones* this way: ". . . judges are entitled to make law when they decide cases, but they are not entitled to make law up" (p. 200). As he elaborated, "judicial law-making is an essential part of our common law tradition. But judges are not entitled to make up law or create it out of thin air. They must provide reasoned decisions, based upon existing and recognized legal norms and arguments acceptable to the community and consistent with the limits inherent in our democratic tradition" (pp. 200-201).

[314] The parties before this Court have not cited a single decision in which a court recognized a new tort that was unnecessary to provide the plaintiff with the remedy sought. Rather, consistent with the restraint expressed in *Jones*, cases recognizing new torts have involved situations where the courts were responding to facts that cry out for a remedy that they could not otherwise provide (see, e.g., *Caplan v. Atas*, 2021 ONSC 670, 71 C.C.L.T. (4th) 36, at paras. 168-74; *Jane Doe 72511 v. M. (N.)*, 2018 ONSC 6607, 143 O.R. (3d) 277, at para. 95; *Wilkinson v. Downton*, [1897] 2 Q.B. 57).

[315] In summary, courts have fashioned principles of appropriate incremental judicial lawmaking to guide judges in developing the common law and to ensure that it maintains necessary flexibility. Adherence to these principles is essential to maintain public trust in the judiciary and the institutional legitimacy of the courts. Courts should recognize a new tort only when it is necessary to provide a remedy on the facts before them. Because the common law develops incrementally through concrete disputes, courts decline to create new torts when existing causes of action can provide full compensation.

B. *The Existing Torts Provide Full Compensation in This Case*

[316] The principle that courts should recognize a new tort only when it is necessary to provide a remedy on the facts before them is sufficient to dismiss this appeal. The trial judge concluded that Ms. Ahluwalia was owed full compensation under the existing torts. In my respectful view, there is no basis to interfere with that conclusion.

[317] To explain why, I will begin by outlining how the new tort issue arose at first instance. I will then demonstrate how the existing torts have evolved and provide the flexibility necessary to secure just remedies for individuals in Ms. Ahluwalia's circumstances. I will close by addressing why I respectfully disagree with my colleagues' decision to interfere with the trial judge's conclusion that Ms. Ahluwalia is owed full compensation under the existing torts.

(1) Ms. Ahluwalia Did Not Ask the Trial Judge to Create a New Tort

[318] In the courts below, Mr. Ahluwalia raised procedural fairness concerns about the trial judge's decision to propose creating, on her own initiative and after the close of evidence, a new tort of family violence. Although these concerns were not repeated before this Court, the manner in which this case proceeded at trial provides important context for understanding why it is an inappropriate vehicle to create a new tort.

(a) *Ms. Ahluwalia Claimed Damages for Physical and Mental Abuse*

[319] At trial, Ms. Ahluwalia claimed damages for the physical and mental abuse she suffered at the hands of Mr. Ahluwalia during their marriage; she made no claim for damages other than for such abuse. In her pleading, Ms. Ahluwalia claimed:

> An order for general, exemplary and punitive damages for the physical and mental abuse suffered by the Respondent, Kuldeep Kaur Ahluwalia at the hands of the Applicant, Amrit Pal Singh Ahluwalia; [Emphasis added; emphasis in original deleted.]
>
> (Mr. Ahluwalia's Compendium, at p. 126)

[320] In support of her claim, Ms. Ahluwalia pleaded material facts detailing Mr. Ahluwalia's physical, emotional, mental, and verbal abuse. She stated that her husband was "physically, emotionally, mentally and verbally abusive throughout [their] marriage", and described violence she suffered in the presence of their children, including "physica[l] abus[e]", "menta[l] tortur[e]", "threats of dire consequences", and efforts by Mr. Ahluwalia to "try and control and torture" her (Mr. Ahluwalia's Compendium, at pp. 132-33). She also said that she had discussed her abuse and suffering with medical professionals, including her doctors, and was "currently seeing counsellors from time to time and [had] a psychiatrist due to the aftermath of the physical, mental, emotional and verbal abuse that [she] suffered at the hands of [her] husband" (pp. 133-34).

(b) *After the Close of Evidence, the Trial Judge Asked the Parties for Written Submissions on Whether She Should Create a New Tort of Family Violence*

[321] After the evidence had closed and the court had reserved its decision, the trial judge asked the parties to provide written submissions on various issues, including whether the court should create a new tort of family violence in Canadian law:

> What is the specific tortious conduct at issue?
>
> — Is the tortious conduct limited to claims for assault, battery, or intentional infliction of emotional distress?
>
> — Is there a tort of family violence in Canadian law? If not, should such a tort be recognized by the Court?
>
> What evidence do you rely on in support of your position on liability?
>
> — How should I treat the medical and counselling records?
>
> — How should I treat the evidence of the lay witnesses?

If liability is established, what quantum of damages should be awarded?

— What are factors relevant to the award of damages?

(See trial reasons, at para. 33, citing Endorsement of Mandhane J., dated February 8, 2022.)

(c) *Neither Party Asked the Trial Judge to Create a New Tort of Family Violence*

[322] Both parties filed closing written submissions, but neither party asked the trial judge to create a new tort of family violence. There was no closing oral argument.

[323] Ms. Ahluwalia, who was self-represented at trial, claimed "an award for general and punitive damages . . . in the amount ranging between $50,000.00 - $100,000.00" (Ms. Ahluwalia's Closing Written Submissions, dated February 22, 2022, at p. 11). At no point did she ask the trial judge to create a new tort of family violence, despite the trial judge having invited her to do so. Instead, Ms. Ahluwalia claimed "an order for General and Punitive damages for the various types of abuse inflicted on her by [Mr. Ahluwalia]" (p. 3). She explained that "[t]he specific tortious conduct at issue is [Mr. Ahluwalia]'s physical, mental, verbal, emotional, sexual and financial abuse throughout the marriage, and even after the date of separation" (p. 3). She cited case law supporting these claims and argued that "the courts have made it clear that such a tortious claim may be made by a spouse during a family law proceeding" (p. 3). She relied exclusively on cases providing for recovery based on existing torts and claimed aggravated damages for the "humiliating or undignified circumstances" inflicted on her by Mr. Ahluwalia (p. 8).

[324] Specifically, Ms. Ahluwalia cited *Booth v. Booth* (1995), 80 O.A.C. 399, at para. 3, *Costantini v. Costantini*, 2013 ONSC 1626, 28 R.F.L. (7th) 356, and *Montgomery v. Kenwell*, 2017 ONSC 3107, 97 R.F.L. (7th) 433. In *Booth*, the Court of Appeal for Ontario affirmed that a claim for damages for assault, negligence, and intentional infliction of emotional suffering may be tried immediately after a petition for divorce. In *Costantini*, the Ontario Superior Court followed *Booth* and awarded general and aggravated damages based on the torts of assault and battery for spousal violence involving physically and verbally aggressive behaviour causing physical and emotional injuries. In *Montgomery*, the Ontario Superior Court awarded general and aggravated damages for assault and battery for "14 years of abuse and its sequela", including the plaintiff's low self-esteem, social withdrawal, sleep deprivation, and depression and anxiety (para. 37).

[325] Ms. Ahluwalia also referred to the definition of family violence under the *Divorce Act* and repeated that she "ha[d] experienced the physical and mental abuse . . . during over 16 years of marriage" (Ms. Ahluwalia's Closing Written Submissions, at p. 11). Although she illustrated the physical and emotional abuse that she had suffered by referring to the language in the *Divorce Act*, she did not state that this required the court to create a new tort.

[326] Mr. Ahluwalia's closing written submissions denied the need to create a "tort of general family violence in Canadian law" (Mr. Ahluwalia's Closing Written Submissions at Trial, dated February 22, 2022, at p. 6). He highlighted that Ms. Ahluwalia's "pleadings s[ought] an order for damages based on physical abuse (assault and battery) and mental abuse (assuming that to mean intentional infliction of mental

suffering)", which are already compensable under existing torts (p. 6). Mr. Ahluwalia's reply closing written submissions also stated that "[n]o notice of the new tort claim of family violence was provided [by Ms. Ahluwalia] or was such a claim made by [her] in her pleadings or at trial", and objected to the trial judge raising this issue after the evidence had closed (Mr. Ahluwalia's Reply Closing Written Submissions at Trial, dated February 28, 2022, at p. 3). As he wrote: "[t]here must be procedural fairness and notice to a party so that they can adequately respond/defend it"; "[n]othing in Ms. Ahluwalia's trial evidence suggested that she was arguing a new tort of family violence or financial abuse. To determine the tortious conduct on claims not plead by a party and then raised by the court after the close of evidence, is a breach of procedural fairness and natural justice" (p. 5).

(d) *The Trial Judge Created a New Tort of Family Violence*

[327] The trial judge created a new tort of family violence with three modes of liability involving (1) violent or threatening conduct (consistent with the torts of assault and battery); (2) coercive or controlling behaviour; and (3) conduct known with substantial certainty to cause the plaintiff subjective fear (consistent with the torts of battery or intentional infliction of emotional distress) (para. 53). She noted that she had asked the parties for written submissions on this issue and that Ms. Ahluwalia had argued that "recognition of the tort of family violence is necessary given the emphasis on 'family violence' in the *Divorce Act*" (para. 34). The trial judge also stated that Ms. Ahluwalia "essentially pled the tort of family violence" (para. 27).

[328] With respect, Ms. Ahluwalia made no such pleading or submission. Although Ms. Ahluwalia referred to the definition of family violence in the *Divorce*

Act, her claim was rooted entirely in existing torts, as confirmed by the cases she cited. Even reading Ms. Ahluwalia's pleading and closing written submissions generously, Ms. Ahluwalia never asked the trial judge to create a new tort.

[329] The trial judge also wrote that Ms. Ahluwalia "did not plead the specific torts of assault, battery, or [intentional infliction] of emotional distress" (para. 27). With respect, however, Ms. Ahluwalia was not required to do so. She was required to plead material facts to justify her claim; she was not required to plead law or to identify specific causes of action (see Beswick, at p. 434, citing *Nevsun*, at para. 177; see also *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 25.06(1) and (2); *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 22; *Lawrence v. Peel Regional Police Force* (2005), 250 D.L.R. (4th) 287 (Ont. C.A.), at para. 5). As Professor Beswick has noted, Ms. Ahluwalia "had not pleaded any particular legal form. Nor did she need to . . . . She was only obliged to describe to the court and to the defendant what the defendant had done to her that warranted a remedy" (p. 435). It is settled law that "[i]t is not necessary for a pleader to put a legal name to the claim or defence or to plead a formula of legal elements" (P. M. Perell and J. W. Morden, *The Law of Civil Procedure in Ontario* (5th ed. 2024), at ¶5.113 (footnote omitted)).

[330] Ms. Ahluwalia pleaded material facts supporting her claims for physical and mental abuse. She was not required to identify the specific torts of assault, battery, or intentional infliction of emotional distress to be legally entitled to a remedy. She did, however, invoke each of these torts, by referring to case law awarding damages for such torts in the family context, citing *Booth*, *Costantini*, and *Montgomery*.

[331] Indeed, the trial judge herself found Mr. Ahluwalia liable in the alternative for assault and intentional infliction of emotional distress. On the trial judge's own findings, Ms. Ahluwalia pleaded material facts supporting each of these torts.

[332] The trial judge described her newly created tort of family violence as referring to patterns of violent and coercive conduct that, in her view, were not adequately addressed by existing torts. She noted that Ms. Ahluwalia's claim was based on "incidents of physical assault, mental abuse, threats and financial abuse as a pattern of coercion and control" (para. 35). The new tort of family violence, which involved three modes of liability, was not based on the parties' submissions. Neither party argued for such a tort. Both parties first learned of this new tort only upon receiving the trial judge's reasons for judgment.

(e) *Mr. Ahluwalia Raised Procedural Fairness Concerns Before the Court of Appeal*

[333] Before the Court of Appeal, Mr. Ahluwalia conceded liability under the existing torts of assault, battery, and intentional infliction of emotional distress, but urged the court to overturn the trial judge's new tort of family violence. He argued that there was no proper basis in law to recognize such a new tort and again objected to how the trial judge had proceeded. He submitted that "[t]he inappropriateness of recognizing the novel tort is amplified by procedural issues related to the trial and the tort"; he also claimed that "a trial judge's introduction of a novel theory of liability via reasons was fundamentally unfair and that alone warranted appellate intervention" (A.F. in the C.A., at para. 61). As he submitted, "[a] party must know the case to be met before the trial commences, not after it ends. It is not sufficient to be permitted to file further written

submissions after the evidence is complete" (para. 61, citing *Rodaro v. Royal Bank of Canada* (2002), 59 O.R. (3d) 74 (C.A.), at paras. 60-63, cited in *Wilson v. Alharayeri*, 2017 SCC 39, [2017] 1 S.C.R. 1037, at paras. 71-72, and *Saadati v. Moorhead*, 2017 SCC 28, [2017] 1 S.C.R. 543, at para. 9; *A-C-H International Inc. v. Royal Bank of Canada* (2005), 197 O.A.C. 227, at paras. 16-18; *Hayward v. Hayward*, 2021 ONCA 175, at para. 4; and *TSP-INTL Ltd. v. Mills* (2006), 81 O.R. (3d) 266 (C.A.), at paras. 29-39).

[334] The Court of Appeal noted Mr. Ahluwalia's argument that the trial judge had breached procedural fairness by finding liability on a basis not pleaded or argued (para. 31). The court did not address this ground of appeal, however, since it concluded on substantive grounds that there was no basis to create a new tort of family violence in this case (paras. 47-124).

[335] I pause here to acknowledge that a trial judge presiding over a case involving a self-represented litigant faces many challenges, including the obligation to balance the duty to assist the litigant with the duty to remain neutral and avoid becoming the lawyer for a party. Guidance on managing those challenges is provided in the Canadian Judicial Council's *Statement of Principles on Self-represented Litigants and Accused Persons*, September 2006 (online), which has been endorsed by this Court and appellate courts across Canada (*Pintea v. Johns*, 2017 SCC 23, [2017] 1 S.C.R. 470, at para. 4; *Mazraani v. Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50, [2018] 3 S.C.R. 261, at para. 39; *Davis v. Canada (Royal Canadian Mounted Police)*, 2024 FCA 115, at paras. 38-42; *R. v. Tossounian*, 2017 ONCA 618, 354 C.C.C. (3d) 365, at paras. 36-39; *Girao v. Cunningham*, 2020 ONCA

260, 2 C.C.L.I. (6th) 15, at paras. 149-52; *Williams v. Williams*, 2015 ABCA 246, 23 Alta. L.R. (6th) 303, at para. 38; *Malton v. Attia*, 2016 ABCA 130, 398 D.L.R. (4th) 350, at paras. 31-54). Those principles state that while a judge has a responsibility to "promote opportunities for all persons to understand and meaningfully present their case", they are not to prepare legal arguments for self-represented individuals, who "are expected to prepare their own case" (*Statement of Principles on Self-represented Litigants and Accused Persons*, at pp. 2 and 9). As the Alberta Court of Appeal has cautioned, a trial judge "must guard against descending into the arena from the bench and advocating for the self-represented litigant" (*Malton*, at para. 32, citing *Cicciarella v. Cicciarella* (2009), 252 O.A.C. 156 (Div. Ct.), at para. 37).

[336] As a result, even in private family law litigation, a trial judge should consider whether to seek submissions from *amicus curiae* to ensure trial fairness, particularly when the court proposes to take the law in an unprecedented new direction without the benefit of the parties' submissions (see *Morwald-Benevides v. Benevides*, 2019 ONCA 1023, 148 O.R. (3d) 305, at paras. 25-40; *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43, [2013] 3 S.C.R. 3, at para. 47). As this Court has emphasized, "a court should not have to decide 'contested, uncertain, complex and important points of law or of fact without the benefit of thorough submissions', which may not be available from the parties acting alone" (*R. v. Kahsai*, 2023 SCC 20, at para. 37, quoting *Criminal Lawyers' Association*, at para. 108).

(f) *Conclusion*

[337] The procedural background of this case shows that Ms. Ahluwalia claimed $100,000 in damages for physical and mental abuse; she claimed no damages on any

other basis. She sought damages for both the specific incidents and the broader pattern of physical and emotional abuse she suffered, but she did not ask the trial judge to recognize a new tort of family violence. Instead, she relied exclusively on case law applying existing torts to support her claim for damages.

[338] I turn now to explore that case law and show how it has evolved to provide full compensation to Ms. Ahluwalia and others with similar claims.

(2) Existing Torts Address Intimate Partner Violence

[339] The existing common law governing intimate partner violence reflects a gradual and ongoing process of shedding gender stereotypes and sexist premises from tort law. Through both legislative reform and principled judicial decision-making, the law has progressively moved away from outdated premises that were once the basis of judicial reasoning. This evolution has been shaped significantly by decisions authored by women judges. The law now provides protection for bodily integrity, psychological security, and personal autonomy, while flexible approaches to damages ensure that victims of intimate partner violence are fully compensated, as Ms. Ahluwalia was here. In my respectful view, these developments should be recognized and affirmed.

(a) *Historical Barriers to Recovery*

[340] Historically, outdated doctrines such as coverture and spousal immunity shielded intimate partner violence from tort scrutiny — not because such violence fell outside existing causes of action, but because wives lacked separate legal standing to sue their husbands (F. Kelly, “Private Law Responses to Domestic Violence: The

Intersection of Family Law and Tort" (2009), 44 *S.C.L.R.* (2d) 321, at p. 323). The law treated the family as a private sphere free from state intervention and preserved a husband's authority over his wife and children (F. E. Olsen, "The Myth of State Intervention in the Family" (1985), 18 *U. Mich. J.L. Ref.* 835, at pp. 846-48; Kelly, at p. 323). Under the doctrine of coverture, a woman after marriage would find her "very being or legal existence . . . incorporated and consolidated" into that of her husband (W. Blackstone, *Commentaries on the Laws of England* (1768), Book I, at pp. 442-45). As Wilson J. wrote in *Lavallee*, "the law historically sanctioned the abuse of women within marriage as an aspect of the husband's ownership of his wife and his 'right' to chastise her. One need only recall the centuries old law that a man is entitled to beat his wife with a stick 'no thicker than his thumb'" (p. 872).

[341] Even after coverture was judicially abolished, the sexism underlying that doctrine persisted through other legal rules that prevented family violence from being litigated and recognized as tortious. For example, the doctrine of spousal immunity operated as a complete defence to an action in tort between spouses, until it was abolished by legislation (see *Angus v. Sun Alliance Insurance Co.*, [1988] 2 S.C.R. 256). At one time, such features of tort law were wrongly seen as serving a desirable function of preserving the sanctity of the family (see D. Sowter and J. Koshan, "'Weaponizing' The Tort of Family Violence? Myths, Stereotypes, Lawyers' Ethics and Access to Justice" (2024), 40 *Windsor Y.B. Access Just.* 311, at pp. 329-30). However, once these formal legal barriers were removed, courts became free to consider tort claims arising from intimate partner violence.

(b) *Modern Tort Claims for Intimate Partner Violence*

[342] A growing body of family law jurisprudence shows courts now joining tort claims to family law proceedings and applying established torts to address the pernicious harms of intimate partner violence (see M.-J. Maur, "Torts and Family Law: What's New, What's Old and How To Use It" (2022), 41 *C.F.L.Q.* 23). In particular, the torts of assault, battery, and intentional infliction of emotional distress are regularly applied in the context of intimate partner violence. Collectively, these torts help protect an individual's personal autonomy, bodily integrity, and psychological security from intrusion (*Scalera*, at paras. 8-16; A. Botterell, "Trespass to the Person", in E. Chamberlain and S. G. A. Pitel, eds., *Fridman's The Law of Torts in Canada* (4th ed. 2020), 75, at p. 75; E. Chamberlain and S. G. A. Pitel, eds., *Introduction to the Canadian Law of Torts* (4th ed. 2020), at pp. 111-17). I will briefly outline each tort in turn.

[343] First, the tort of assault protects against threats of physical violence that reasonably cause the plaintiff to apprehend imminent harmful or offensive contact by the defendant (*Barker v. Barker (Litigation Guardian of)*, 2022 ONCA 567, 162 O.R. (3d) 337, at para. 138; *McLean*, at para. 59; A. M. Linden et al., *Canadian Tort Law* (13th ed. 2025), at §2.04; *Remedies in Tort* (loose-leaf), by J. Leitch and A. C. Hutchinson, eds., at § 2:4). The tort of assault allows an individual to recover for injury to their psychological integrity and security of the person, even when the feared contact never materializes (Linden et al., at §2.04[2]; Chamberlain and Pitel, at pp. 114-15).

[344] Second, the tort of battery protects an individual's right to personal autonomy by providing a cause of action for direct, non-trivial physical contact without

consent. Once contact is proven, the burden shifts to the defendant to disprove intention or negligence, or to establish a defence such as consent (*Scalera*, at paras. 8-41; Linden et al., at §2.04[1]). A plaintiff need not prove physical or psychiatric injury, or substantial force, and liability is not limited to foreseeable consequences (*Scalera*, at paras. 10-16; *Norberg v. Wynrib*, [1992] 2 S.C.R. 226, at p. 263; Linden et al., at §2.04[1]; Chamberlain and Pitel, at pp. 111-13).

[345] Third, the tort of intentional infliction of emotional distress protects against flagrant or outrageous conduct calculated to cause harm and resulting in a visible and provable injury (*Prinzo v. Baycrest Centre for Geriatric Care* (2002), 60 O.R. (3d) 474 (C.A.), at para. 48; *Frame v. Smith*, [1987] 2 S.C.R. 99, at p. 127, per Wilson J., dissenting, but not on this point). The injury need not be a recognized illness or clinically diagnosed condition proved through expert diagnostic evidence, but it must be "serious and prolonged" and exceed the "ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept" (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2 S.C.R. 114, at para. 9; *Saadati*, at paras. 2 and 36-37; see *McLean*, at para. 77; *Guschewski v. Guschewski*, 2017 ONSC 4553, at paras. 52-55; Linden et al., at §2.06[2]; P. H. Osborne, *The Law of Torts* (6th ed. 2020), at p. 284). The intent requirement for this tort is made out when the defendant intended to harm the plaintiff or the harm is foreseeable in the sense of being known to be substantially certain to follow (*Prinzo*, at para. 45; Botterell, at p. 90). The defendant need not have intended or foreseen the exact kind or extent of injury (*Colistro v. Tbaytel*, 2019 ONCA 197, 145 O.R. (3d) 538, at paras. 23-24; *Piresferreira v. Ayotte*, 2010 ONCA 384, 263 O.A.C. 347, at para. 78).

[346] The elements of these torts are contextual and flexible, allowing them to be interpreted generously in cases involving intimate partner violence. For example, whether there is an apprehension of imminent harm can be informed by previous patterns of interaction between the parties (see *Barker*, at para. 175, citing *Warman v. Grosvenor* (2008), 92 O.R. (3d) 663 (S.C.J.), at para. 60; see also *Turton v. Hanson*, 2016 ABQB 343, 40 Alta. L.R. (6th) 357, at para. 71, aff'd 2018 ABCA 84, 66 Alta. L.R. (6th) 232). Further, conduct that, in isolation, might be difficult to characterize as flagrant or outrageous for the purposes of intentional infliction of emotional distress may meet that threshold once it is understood in the particular context of the parties' prior interactions, including relationships of power or control (see Leitch and Hutchinson, at § 10:5, citing *Murray v. Prevost*, [2006] O.J. No. 3239 (Lexis), 2006 CarswellOnt 7522 (WL) (S.C.J.); *Clark v. Canada*, [1994] 3 F.C. 323 (T.D.), at pp. 351-53; see also Osborne, at p. 283).

[347] When these torts are made out, the plaintiff must be put in the position they would have been in had the torts not been committed, insofar as this is possible with damages (see *Livingstone v. Rawyards Coal Co.* (1880), 5 App. Cas. 25 (H.L.), at p. 39; *Barber v. Vrozos*, 2010 ONCA 570, 269 O.A.C. 108, at para. 86). This includes aggravated damages, which vindicate the loss of dignity or autonomy and provide compensation for pain and suffering. Aggravated damages are a species of non-pecuniary, compensatory damages that "take into account the additional harm caused to the plaintiff's feelings by reprehensible or outrageous conduct on the part of the defendant" (*Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595, at para. 116; see also *Vorvis v. Insurance Corporation of British Columbia*, [1989] 1 S.C.R. 1085, at p. 1099; *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30, [2006] 2

S.C.R. 3, at paras. 51-53; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at paras. 188-89; B. Feldthusen and H. MacIvor, *Halsbury's Laws of Canada: Damages* (2025 Reissue), at para. HDA-7; Osborne, at p. 313; Leitch and Hutchinson, at § 30:9; D. Debenham, "Less Like a Fine, and More Like a Damage Award — The Case for a Rational Basis for Calculating General, Aggravated and Punitive Damages" (2025), 56 *Advocates' Q.* 72, at pp. 91-95).

[348] For example, although an affront to dignity is unnecessary to make out the tort of battery, the significant affront to dignity engendered by a sexual battery is properly addressed by awarding aggravated damages (*Norberg*, at pp. 264-65, per La Forest J.; see also *L.F. v. J.R.F.* (2001), 144 O.A.C. 372). The rationale for this approach was helpfully summarized by the Nova Scotia Court of Appeal: ". . . the cases have recognized that there are fundamental, although intangible, interests at stake: the victim's dignity and personal autonomy [and that] the award of damages should take a functional approach in relation to these interests in addition to the more familiar ones of pain, suffering and loss of enjoyment of life" (*G. (B.M.) v. Nova Scotia (Attorney General)*, 2007 NSCA 120, 288 D.L.R. (4th) 88, at para. 127). In awarding aggravated damages, courts consider "humiliation, degradation, violence, oppression, inability to complain, reckless conduct which displays a disregard of the victim, and post-incident conduct which aggravates the harm to the victim" (*Weingerl v. Seo* (2005), 256 D.L.R. (4th) 1 (Ont. C.A.), at para. 70).

[349] Although *G. (B.M.)* and *Weingerl* were sexual battery cases, the same factors have been applied in the intimate partner violence context (see, e.g., *Shaw v. Shaw*, 2012 ONSC 590, 9 R.F.L. (7th) 359, at paras. 109-11). For example, in *Kooner*

v. Kooner (1989), 19 R.F.L. (3d) 221 (B.C.S.C.), the trial judge held that a husband's severe assault on his wife justified increasing the general damages awarded to include aggravated damages to reflect the "loss of dignity and considerable humiliation" suffered by the wife (p. 224). In *Johal v. Johal*, [1996] O.J. No. 419 (Lexis), 1996 CarswellOnt 397 (WL) (C.J. (Gen. Div.)), a trial judge awarded a wife general, aggravated, and punitive damages for her husband's "oppressive and controlling conduct" and the "loss of dignity" visited upon her during the marriage (at para. 17), arising from "continuous physical assaults" and "physical and emotional harassment" (para. 13). According to Professor Mary-Jo Maur, this approach is "becoming standard in Ontario" (p. 39).

[350] Nor is there any justification for courts to discount damages awards between intimate partners as compared with cases involving strangers (see Kelly, at pp. 331-39; S. Eisen, "Damages for Spousal Violence — Why are They So Low?" (2024), 43 *C.F.L.Q.* 181). I endorse, without reservation, the following remarks of Gomery J. (as she then was) in *Jane Doe 72511*, at para. 117, in awarding $100,000 in damages for intimate partner violence:

> I do not see why assault and battery by a spouse should attract a lower range of damages than attacks by any other defendant. Violence by a partner may in fact be a more traumatic event than violence by a stranger. Spousal violence violates the trust that we are taught to have in our partners. It often involves repeated verbal and physical abuse. It typically occurs at home, the place where we should feel the most safe and secure. A battered spouse may be left not only with bruises but with an inability to trust other people or ever really feel safe.

[351] Courts have also noted that spouses have a "special relationship", such that violence in that context is a "particularly abhorrent tort . . . deserving of condemnation"

through damages (*Surgeoner v. Surgeoner*, [1993] O.J. No. 2940 (Lexis), 1993 CarswellOnt 4419 (WL) (C.J. (Gen. Div.)), at paras. 38-41 (WL); *Stewart v. Button*, 2009 NBQB 45, 343 N.B.R. (2d) 305, at paras. 24-32). Violence in the intimate partner context has been viewed as "[a] particularly egregious" aggravating factor in determining damages (*Montgomery*, at para. 35; see also *S.C. v. I.E.W.*, 2023 BCSC 1653, at paras. 64-65, citing *R. v. Somers*, 2021 BCCA 205, at paras. 67 and 69).

[352] In sum, the torts of assault, battery, and intentional infliction of emotional distress help protect a plaintiff's "personal integrity and autonomy" by making actionable various forms of intentional interference with a person's physical and psychological integrity (Osborne, at p. 268). They represent only three among many other torts — including negligence, false imprisonment, and intrusion upon seclusion — that have also been invoked successfully in the context of intimate partner violence (see Maur, at pp. 59-76; *Hollingshead v. O'Reilly*, 2020 ABQB 538; *Yenovkian v. Gulian*, 2019 ONSC 7279, 62 C.C.L.T. (4th) 45; *E.L.R. v. D.M.S.*, 2026 ONSC 914).

(c) *Developments After the Court of Appeal's Decision*

[353] The Court of Appeal's decision in this case has brought renewed attention to tort claims in the intimate partner context. In the almost three years since that decision was released, courts have routinely relied on existing torts to address the varied and severe harms arising from intimate partner violence and have granted significant awards of damages (see, e.g., *Mikhail v. Mikhail*, 2024 ONSC 4427; *Pichie v. Pichie*, 2024 ONSC 2868; *Barreto v. Salema*, 2024 ONSC 4972, 11 R.F.L. (9th) 31; *C.S.K. v. P.K.*, 2025 BCSC 1728; *J.K.P. v. L.S.B.*, 2025 BCSC 1494). Many of these cases bear a striking resemblance to the intimate partner violence that Ms. Ahluwalia

suffered. Recently decided cases, which are elaborated upon below, show that compensation amounts for such torts are increasing to accurately reflect the serious harms suffered by victims of intimate partner violence. My colleague says that these decisions fail "to account for the full range of conduct associated with coercive conduct" (Kasirer J.'s reasons, at para. 164) and lack clarity over the basis for damages (para. 166). I respectfully disagree with the view that these judges erred by applying established tort law to the facts before them.

[354] In *Wang v. Li*, 2024 ONSC 2352, the court awarded $75,000 in damages for a husband's intentional infliction of mental and emotional distress on his wife. The court found that during four years of marriage the husband showed a pattern of "controlling behaviour" towards his wife, including "cursing her and yelling at her, and threatening to kill her and her daughter if [s]he did not pay his expenses or give him money" (paras. 119-20 and 132). The trial judge found that all the forms of intimate partner violence identified by the Court of Appeal in Ms. Ahluwalia's case were present, including "physical violence, psychological abuse, financial abuse and intimidation" (para. 126, quoting C.A. reasons, at para. 1). The trial judge stated that "[s]ome of the earlier cases had quite modest awards while some more recent cases have larger awards, perhaps reflecting the growing appreciation of the damage caused by intimate partner violence, in all its forms, and the need to condemn it" (para. 130).

[355] In *Barreto*, the wife was awarded damages for the torts of assault, battery, and intentional infliction of emotional distress based on physical assaults and prolonged "gaslighting" over ten years after the couple married in India and moved to Canada. The husband secretly convinced the wife's family that she was unstable and violent,

while physically restraining and mocking her under the guise of “protection”. Relying extensively on the Court of Appeal’s decision in Ms. Ahluwalia’s case, the trial judge, Vella J., found that the husband’s tactics “were designed to make [the wife] question the reality of the abusive situation she was in” (para. 326). The trial judge stated that the husband’s pattern of psychological manipulation was “a deep betrayal of trust”, especially because the wife had left her family and professional identity in India and had no real support in Canada (paras. 447-48). She awarded the wife $150,000 in general and aggravated damages and $10,000 in punitive damages.

[356] In *Zunnurain v. Chowdhury*, 2024 ONSC 5552, 10 R.F.L. (9th) 124, a husband was found liable for assault, battery, and intentional infliction of emotional distress. The trial judge found that, for almost 20 years, the husband “used physical and sexual violence to control” the wife, who could not report the abuse “because of the cultural and religious stigma around [intimate partner violence] in her family and community” (para. 254). Citing the Court of Appeal’s decision in Ms. Ahluwalia’s case, the trial judge found that the wife suffered a “pattern of abuse” that had caused her to live in “near-constant fear of imminent harm” (para. 228). The trial judge recognized that damages may reflect dignity loss, humiliation, and the pattern of abuse in intimate partner violence and awarded the wife $175,000 in compensatory and aggravated damages (paras. 248-52). He also awarded her $25,000 in punitive damages.

[357] Other recent cases confirm that existing torts like intentional infliction of emotional distress can be applied flexibly in the intimate partner context to capture

abusive patterns of behaviour for incidents that, in isolation, may not rise to the level of tortious conduct.

[358] For example, in *M.J.A. v. V.S.B.C.*, 2025 YKSC 17, 16 R.F.L. (9th) 142, Duncan C.J. emphasized that intimate partner violence includes verbal abuse, psychological manipulation, and financial exploitation. She treated these as supporting a distinct finding of intentional infliction of emotional distress and justifying $50,000 in general and aggravated damages. Citing the Court of Appeal's decision in Ms. Ahluwalia's case, Duncan C.J. stated that "[c]ourts can consider the context of the relationship and pattern of behaviour causing harm when assessing the elements of [the tort of intentional infliction of emotional distress]" (para. 100). She found that the husband was "controlling, belittling, authoritarian, critical and unkind" (para. 143). The wife was "constantly walking on eggshells" for fear of the husband's "explosive verbal outbursts" (paras. 143-44). The husband also took advantage of the wife financially, since she contributed more to household expenses and paid off his credit card debt incurred for his personal pursuits (para. 154).

[359] In *Sethi v. Sethi*, 2025 ONSC 5079, 19 R.F.L. (9th) 299, McGee J. relied on the Court of Appeal's decision in Ms. Ahluwalia's case and awarded the wife $100,000 in damages for intentional infliction of emotional distress arising out of a 30-year marriage marked by physical, sexual, emotional, and financial abuse. She accepted the wife's description of her former spouse's conduct as "controlling, manipulative and entirely self-focussed, punctuated by violent outbursts aggravated by lengthy periods of alcohol and substance abuse" (para. 9). The wife suffered both sexual assaults and physical attacks. McGee J. found that the "specific incidents and an overall pattern of

emotional, physical and financial harm" supported a claim for intentional infliction of emotional distress (paras. 55 and 64).

[360] None of these cases relied on the creation of a new tort, yet each still provided meaningful remedies for victims. Many courts have heeded the Court of Appeal's direction in Ms. Ahluwalia's case that "the quantum of damages historically awarded may need to evolve to better reflect the current societal understanding of the extent of th[e] harms [of intimate partner violence]" (para. 128; see, e.g., *Barreto*, at para. 352; *Zunnurain*, at para. 249). Others will likely follow suit.

[361] At the same time, I acknowledge that courts can and must do more to shed outmoded notions about the effects of violence in the context of intimate partner relationships (see *K.M.N. v. S.Z.M.*, 2024 BCCA 70, 98 R.F.L. (8th) 275, at paras. 110-24, citing J. Koshan, "Challenging Myths and Stereotypes in Domestic Violence Cases" (2023), 35:1 *Can. J. Fam. L.* 33, at pp. 38-39, and D. Martinson and M. Jackson, "Family Violence and Evolving Judicial Roles: Judges as Equality Guardians in Family Law Cases" (2017), 30 *Can. J. Fam. L.* 11, at p. 34; see also *Barreto*, at para. 166; *McGean v. Andrews*, 2025 NSSC 344, at para. 42; *Fleury v. Budd*, 2025 BCSC 2035, at para. 383; *Malamas v. Wey*, 2026 ONCA 133, at para. 28). As DeWitt-Van Oosten J.A. cautioned, trial judges must "assiduously guard" against myths and generalized assumptions "in whatever form" (*K.M.N.*, at para. 122). In particular, the common law must continue to shed gendered assumptions about intimate partnerships, which are incompatible with the equality rights protected by the *Charter*. As this Court recently observed, courts must be "especially alert to gender dynamics and the presence of

family violence” in every family law context (*Dunmore v. Mehralian*, 2025 SCC 20, at para. 73).

[362] Ms. Ahluwalia points in particular to the recent case of *Hammond v. Holtz*, 2024 BCSC 447, as symptomatic of the need for reform. In that case, the tortfeasor would often shout at his spouse and call her demeaning names in response to minor irritations (para. 88). While on a family trip, he committed sexual battery against her while she slept (paras. 99, 102 and 104). The trial judge distinguished other cases involving sexual battery, which he said regularly resulted in awards exceeding $125,000, on the basis that this was only one isolated incident between spouses (para. 111). He based his quantum on cases involving non-sexual battery and awarded $10,000 in general damages (paras. 112 and 116).

[363] Ms. Ahluwalia says that the reasoning in *Hammond* is troubling (A.F., at para. 38). I agree. Decisions that seek to justify lower damages awards for intimate partner violence are entirely out of step with the dominant strand of the jurisprudence and should not be followed.

[364] In closing on this point, I underscore that the recent case law in which existing torts have been properly applied does not preclude the recognition of a new tort for intimate partner violence in an appropriate case, should the facts cry out for a remedy that the law does not otherwise provide.

(d) *Conclusion*

[365] The history of the common law shows that once historical barriers to wives recovering against their husbands in tort were removed, courts incrementally and effectively adapted torts like battery, assault, and intentional infliction of emotional distress to the intimate partner context. Courts have recognized the breach of trust inherent in intimate partner violence, the centrality of dignity and autonomy, the compensability of non-physical and cumulative harms, including the harms from financial control, and the need to avoid myths and stereotypes, while also adjusting damages awards to reflect the contemporary understanding of these insidious harms.

[366] Given this evolution, the existing torts were fully capable of addressing the factual matrix in this case and provided ample basis for the trial judge's award of damages, a point to which I now turn.

(3) The Trial Judge's Award of Compensatory and Aggravated Damages Under Existing Torts Should Not Be Disturbed

[367] In this case, Ms. Ahluwalia sought between $50,000 and $100,000 in general and punitive damages for the physical and psychological abuse she suffered — conduct that she described in her closing submissions as "physical, mental, verbal, emotional, sexual and financial abuse throughout the marriage". The trial judge awarded $100,000 in compensatory and aggravated damages: $50,000 in compensatory damages for "ongoing mental health disabilities and lost earning potential", with an additional $50,000 in aggravated damages for the "pattern of coercion and control and the clear breach of trust" (paras. 114 and 119-20). The award of a further $50,000 in punitive damages was set aside by the Court of Appeal and is not before this Court.

[368] Crucially, the trial judge concluded that this full compensation award was also justified under the existing torts of assault and intentional infliction of emotional distress. Although the trial judge first relied on her newly created tort of family violence, she also expressly found that the established torts grounded exactly the same quantum of damages (paras. 103 and 111).

[369] My colleague Kasirer J. rightly states that intimate partner violence is "more than the sum of its parts" (para. 140). This is because the relationship is characterized by "social, financial, and affective interdependence", which affects the partners' "agency, sense of self and personal dignity, as well as material and physical well-being" (para. 102). Tortious acts in this context, unlike those perpetrated by strangers, can function as "a tool of coercive control" (para. 201). For marginalized women, their vulnerabilities may "aggravate their exposure to coercive control" due precisely to the dependency on their intimate partners (para. 124). I also agree that the trial judge's findings in this case show that Mr. Ahluwalia "capitalized on [Ms. Ahluwalia's] vulnerability as an immigrant woman in a new country" (para. 142).

[370] Yet the trial judge granted aggravated damages specifically to account for these unique aspects of the relationship between the parties and for Ms. Ahluwalia's vulnerabilities. The trial judge found that the "16-year pattern of emotional, mental and psychological abuse" involved "an inherent breach of trust" (para. 48). She awarded aggravated damages for "the overall pattern of coercion and control and the clear breach of trust", specifically to reflect that Mr. Ahluwalia "preyed on [Ms. Ahluwalia]'s vulnerability as a racialized, newcomer woman" (paras. 57 and 119). On

these facts, an award of $100,000 in compensatory and aggravated damages under the existing torts is consistent with the prevailing jurisprudence, considered above.

[371] Even so, a majority of this Court would set aside the trial judge's award of damages under existing torts. My colleagues conclude that the existing torts do not cover the "additional injury flowing from Mr. Ahluwalia's coercive control", and thus find that the award under existing torts "should logically have been less" (Kasirer J.'s reasons, at para. 239; see also para. 56). As a result, they would interfere with the trial judge's order and hold that the $100,000 awarded is for the new tort of intimate partner violence (para. 248). They would also modify the "distribution of compensatory and aggravated damages awarded by the trial judge" by amalgamating aggravated damages into the compensatory amount (para. 248). In holding that the trial judge was wrong to award $100,000 in damages under existing torts, Ms. Ahluwalia's facts are made to "cry out" for a remedy that only a new tort could provide.

[372] I respectfully disagree with this approach for two main reasons.

[373] First, nobody argued before this Court that the trial judge erred in her award of damages under the existing torts or that she made a logical error by assessing the damages to be exactly the same as under the new tort of family violence. To the contrary, Ms. Ahluwalia advised that "there is no appeal before this Court with respect to damages" (A.F., at para. 18). Mr. Ahluwalia similarly advised that "the parties agreed that any further appeals would not address damages" (R.F., at para. 21). The parties agreed not just that $100,000 is the appropriate quantum of damages, but also that there is liability *under the existing torts* in this amount (transcript, day 1, at pp. 2,

4 and 41; transcript, day 2, at p. 79). This position reflected the case before the Court of Appeal, where Mr. Ahluwalia claimed that the quantum of damages awarded under the existing torts was excessive (A.F. in the C.A., at paras. 70-84), and Ms. Ahluwalia responded that the trial judge's assessment of damages was entitled to deference and there was no basis to interfere with the award of compensatory and aggravated damages on any ground (R.F. in the C.A., at paras. 66-67 and 72).

[374] Although this Court has a limited discretion to raise new issues on appeal where failing to do so would risk an injustice, it has also stressed that it is a basic feature of procedural fairness that an appellate court must give the parties "notification and opportunity to respond" (see *R. v. Mian*, 2014 SCC 54, [2014] 2 S.C.R. 689, at paras. 40-48 and 54-59). Intermediate appellate courts have routinely heeded this Court's directive (see *Adamson v. Canada (Canadian Human Rights Commission)*, 2015 FCA 153, [2016] 2 F.C.R. 75, at para. 89; *Canada (Public Sector Integrity Commissioner) v. Canada (Attorney General)*, 2014 FCA 270, at para. 12; *Canada (Attorney General) v. Gallinger*, 2022 FCA 177, 474 D.L.R. (4th) 532, at para. 53; *R. v. Hason*, 2024 ONCA 369, 171 O.R. (3d) 225, at para. 97; *Filkow v. D'Arcy & Deacon LLP*, 2019 MBCA 61, 48 E.T.R. (4th) 190, at para. 25; *Muradov v. College of Naturopathic Doctors of Alberta*, 2024 ABCA 224, 498 D.L.R. (4th) 474, at para. 50).

[375] This Court has also specified that, before raising a new issue, an appellate court "must be satisfied that there is a sufficient basis in the record on which to resolve the issue" (*Mian*, at para. 51; see also *Hason*, at para. 97; *Canada (Public Sector Integrity Commissioner)*, at para. 12). As this Court has warned, "there is always the very real danger that the appellate record will not contain all of the relevant facts, or

the trial judge's view on some critical factual issue, or that an explanation that might have been offered in testimony by a party or one or more of its witnesses was never elicited" (*Mian*, at para. 51, quoting *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19, [2002] 1 S.C.R. 678, at para. 32).

[376] Here, though, my colleagues have concluded that this Court must interfere with the trial judge's formal order because the trial judge erred in her award of damages under the existing torts. They take this view even though both parties expressly stated that the damages are not before the Court, this new issue has not been presented to the parties for submissions, and there is an insufficient basis in the record to resolve it. Nor do they acknowledge this concern about the absence of submissions from the parties before this Court.

[377] Second, setting aside the damages award under existing torts would inappropriately interfere with the trial judge's recognized discretion to quantify damages — a question of mixed fact and law to which appellate deference is owed (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 36; *Southwind v. Canada*, 2021 SCC 28, [2021] 2 S.C.R. 450, at para. 154, per Côté J., dissenting, but not on this point; *Extreme Venture Partners Fund I LP v. Varma*, 2021 ONCA 853, 24 B.L.R. (6th) 38, at para. 53).

[378] There is no basis to interfere with the trial judge's award on this deferential standard. With respect, the trial judge's finding that *in the abstract* the new tort she created could be broader than the existing torts (at paras. 59 and 63) is not inconsistent with her conclusion that *in this case* the damages required to make Ms. Ahluwalia

whole under that new tort equaled the quantum owing under the existing torts. In her analysis, the trial judge identified the compensable harm flowing from both bases of liability — the new and existing torts — as the depression and anxiety that affected Ms. Ahluwalia's earning potential (para. 114). The damages award aimed to compensate her for this harm, while recognizing the aggravating circumstances of this particular case, including the pattern of coercive control through which the tortious action occurred (para. 119). This approach was logical and consistent with other decisions, considered above, where the existing torts were invoked to fully compensate victims of intimate partner violence.

[379] It also bears noting that the trial judge herself explained that her quantification of the damages for the tort claims was actually *understated* and set for pragmatic reasons. As she explained, "[h]ad there been no spousal support payable, [she] could easily have ordered compensatory damages in the range of $100,000" (para. 118). Thus, the trial judge capped the damages awarded by the need to provide spousal support under the *Divorce Act*. The majority does not address this express finding, which tends to refute their argument that the damages under existing torts "should logically have been less" (Kasirer J.'s reasons, at para. 239; see also para. 56).

[380] The suggestion that Ms. Ahluwalia suffered a separate, uncompensated injury is also inconsistent with the trial judge's findings. My colleague points to "economic control", noting the findings that Mr. Ahluwalia controlled the family finances, tracked Ms. Ahluwalia's spending, and closed their joint bank accounts at separation (Kasirer J.'s reasons, at para. 142, citing trial reasons, at paras. 108-10). But the trial judge saw the "financial abuse" as part of the broader "pattern of coercion and

control" pleaded, the totality of which was alleged to have "caused mental and physical harms" (paras. 27 and 35). Ms. Ahluwalia was fully compensated for these injuries. The trial judge did not find *any* injuries to Ms. Ahluwalia's autonomy and dignity interests that went uncompensated under the existing torts.

[381] With respect, I see no reviewable error justifying interference with the trial judge's award of full compensation under existing torts.

(4) Conclusion

[382] The record shows that Ms. Ahluwalia is entitled to full compensation under the existing torts. A new tort is therefore unnecessary. Courts must not engage in abstract law reform and must instead remain anchored in the concrete facts of the case. In my respectful view, on this record, this Court should not recognize a new tort.

C. *The Proposed New Torts Risk Complicating Recovery for Intimate Partner Violence*

[383] Even if it were appropriate to recognize a new tort in this case, in my respectful view, each of my colleagues' complex and unprecedented formulations of the proposed new torts risks complicating the path to recovery for victims of intimate partner violence and inhibiting access to justice. This militates against the recognition of these proposed new torts.

[384] Ms. Ahluwalia submits that the "labyrinthine web" of existing torts with "different tests and inconsistent thresholds" complicates recovery for victims of intimate partner violence (A.F., at para. 66). But the fact that intimate partner violence

can involve a diverse range of wrongful behaviour and engage several torts need not complicate recovery. Intimate partner violence is actionable in Canada; victims of such violence need only plead the material facts of the abuse they suffered; they need not plead the law or name specific torts (Beswick, at p. 435; *Rules of Civil Procedure*, r. 25.06(1) and (2)). Where self-represented litigants have difficulty understanding the substantive law relevant to the facts pleaded, courts should assist them, within proper bounds (see *Statement of Principles on Self-represented Litigants and Accused Persons*, at p. 7; see also *Moore v. Apollo Health & Beauty Care*, 2017 ONCA 383, 2017 CLLC ¶210-048, at paras. 41-45). The many successful claims for intimate partner violence made since the Court of Appeal's decision show that courts have applied existing torts to ensure that victims are fully compensated.

[385] By contrast, in my respectful view, the unprecedented torts advanced by my colleagues risk creating considerable uncertainty for litigants and trial courts.

[386] As a preliminary matter, it bears noting that the formulation of the new tort in this case has shifted at every level of court. Although this Court is not bound by the legal frameworks proposed by the litigants or the courts below, the shifting formulation of the new tort is symptomatic of developing the law in a factual vacuum. At trial, Ms. Ahluwalia did not ask the trial judge to create a new tort and proposed no new tort. The trial judge created a "new tort of family violence" involving three "modes of liability": violence or threatening conduct, behaviour calculated to be coercive and controlling, and conduct known to cause subjective fear (paras. 52-53). Before the Court of Appeal, Ms. Ahluwalia's written materials did not expressly endorse the trial judge's formulation of the new tort but argued that a "narrower tort of 'coercive control'" could

be recognized (R.F. in the C.A., at paras. 58-65). Ms. Ahluwalia now urges this Court to create a new tort of family violence that encompasses the existing "plethora of torts" including battery, assault, and intentional infliction of mental distress (A.F., at para. 105).

[387] My colleague Kasirer J. proposes to recognize yet another differently formulated new tort of intimate partner violence — one that the parties did not propose and on which they have not provided submissions. That new tort would permit recovery when "the defendant [has] intentionally engaged in . . . abusive conduct" in "an intimate partnership or in its aftermath", and that conduct is "on an objective measure, coercive control" (paras. 206-8). Whether conduct amounts to coercive control would depend on "whether a reasonable person, fully apprised of the relevant context of the relationship, would have perceived the defendant's acts, considered cumulatively, as amounting to an assertion of control over the plaintiff that has the effect of depriving them of their dignity, autonomy, and equality in the relationship" (para. 208).

[388] My colleague Karakatsanis J. would recognize a different new tort of intimate partner violence. Under this tort, it would not be necessary to show that abusive conduct amounts to coercive control. Rather, it would be enough to show either abusive conduct that amounts to coercive control or "any act or threat of violence in an intimate partner relationship that causes physical or psychological harm" (para. 254). She leaves open the possibility that this tort could capture "non-violent wrongdoing falling short of coercive control" (para. 285).

[389] With respect, my colleagues' formulations of the new torts are not based on comparative law, judicial *obiter dicta*, or private law commentary. New torts in this form are unprecedented in the common law world. Although torts specifically addressing aspects of family violence exist in some other jurisdictions, they bear little if any resemblance to their proposed new torts (see, e.g., C. Carey, "Domestic Violence Torts: Righting a Civil Wrong" (2014), 62 *Kan. L. Rev.* 695, at pp. 709-10, citing *Cusseaux v. Pickett*, 652 A.2d 789 (N.J. Super. L. 1994), and *Giovine v. Giovine*, 663 A.2d 109 (N.J. Super. App. Div. 1995); Cal. Civ. Code § 1708.6 (1872) (effective 2003)). This sets this case apart from decisions like *Jones*, where the elements of the "new" tort of intrusion upon seclusion were adopted directly from law that had already been applied without issue in other jurisdictions, and were grounded in decades of private law commentary (paras. 15-68). This material helped show that the new tort was a "less radical" change in the law (*Nevsun*, at para. 242).

[390] By contrast, my colleagues' descriptions of the elements of the new torts — which will be the only meaningful guidance for litigants given the lack of foundation in existing law — risk inconsistent and unpredictable applications. For example, outside familiar scenarios already compensable under the existing torts, it is not clear what precise behaviour would make out coercive control. The suggestions that "[m]ere dysfunction" or a "relationship marked by an imbalance" (Kasirer J.'s reasons, at para. 208) are insufficient to make out the new tort do not assist in identifying the threshold for actionable conduct. Busy trial judges and self-represented family law litigants will likely struggle to understand statements from the social science literature like "a 'course of conduct' . . . embedded in control structures, that has cumulative effects" (para. 190, citing E. Stark, *Coercive Control: How Men Entrap Women in Personal*

Life (2nd ed. 2023), at p. 129), or a condition of "unfreedom" (para. 190, citing E. Stark and M. Hester, "Coercive Control: Update and Review" (2019), 25 *Violence Against Women* 81, at p. 89). This is particularly so given that the defendant need not have intended to coercively control through their actions (Kasirer J.'s reasons, at para. 207), and liability under the tort can flow from a single incident, in contrast to other legal definitions of coercive control (para. 188; cf. *Divorce Act*, s. 2(1) "family violence", and *Children's Law Reform Act*, R.S.O. 1990, c. C.12, s. 18(1) "family violence" ("a pattern of coercive and controlling behaviour"); see also House of Commons, Standing Committee on the Status of Women, *Coercive Control in Canada: Report of the Standing Committee on the Status of Women*, 1st Sess., 45th Parl., November 2025, at pp. 11-12).

[391] I also observe that since the objective test is focused on a reasonable person's evaluation of the defendant's conduct, recovery is allowed even when the plaintiff was not actually coercively controlled and when the plaintiff suffered no consequential harm (Kasirer J.'s reasons, at paras. 208-9). The focus is no longer on the harm suffered by the plaintiff, but instead on how a reasonable person would evaluate the relationship. In my respectful view, this is particularly concerning because the parties will likely introduce large volumes of evidence — including the history of the relationship and records of daily communications — to fully contextualize the perspective of the reasonable person. This Court has recognized this as a serious problem in adversarial family law litigation (see, e.g., *Dunmore*, at para. 77).

[392] My colleague Kasirer J. seeks to address the possibility that an abuser could use the new tort against their victim when the victim has merely acted to protect

themselves or their children (para. 193). To do so, this consideration is introduced into the elements of the new tort itself, further complicating those elements, despite long-recognized defences to intentional torts, including self-defence, defence of others, and necessity (see, generally, Linden et al., at §2.05; Leitch and Hutchinson, at §§ 2.12, 2.14, 2.17 and 10.9; Chamberlain and Pitel, at pp. 120-25). Trial judges readily resort to such defences to ensure that acts of resistance by victims do not obscure the broader picture of intimate partner violence (see, e.g., *J.P.H. v. M.P.G.*, 2025 NSSC 121, at paras. 67 and 78; *Wang v. Mitchell*, 2024 BCSC 988, at paras. 441 and 446). With respect, my colleague's approach risks confusing matters by replicating the same principles within a complex new tort.

[393] The complex new analytical tasks for trial judges under the proposed new torts contrast with the straightforward analysis under existing torts. For example, liability for battery is made out simply by showing non-consensual physical contact (see *Scalera*, at para. 7). Aggravated damages are then flexibly applied to arrive at an appropriate remedy, reflecting the impact of the tortious conduct on dignity, equality, and autonomy (see *Weingerl*, at para. 70; *G.* (*B.M.)*, at para. 127). No complex reasonable person test is required, and the focus remains on the actual impact on the plaintiff, rather than the impact a third party *would think* the plaintiff *would have* suffered.

[394] My colleagues' new torts also raise complicated questions about how they will interact with limitations statutes. Some claims in the intimate partner context are exempted from limitation periods by reference to existing torts (see, e.g., *Limitation Act*, S.B.C. 2012, c. 13, s. 3(1)(k); *Limitations Act*, R.S.A. 2000, c. L-12, s. 3.1(1)(b)

and (c); *The Limitations Act*, S.S. 2004, c. L-16.1, s. 16(1)(b); *The Limitations Act*, C.C.S.M., c. L150, s. 18(1)(b); *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, s. 16(1)(h) and (h.2); *Limitation of Actions Act*, S.N.S. 2014, c. 35, s. 11; *Statute of Limitations*, R.S.P.E.I. 1988, c. S-7, s. 5.1(1)(b) and (c); *Limitations Act*, S.N.L. 1995, c. L-16.1, s. 8(2); *Limitation of Actions Act*, R.S.N.W.T. 1988, c. L-8, s. 2.1(2)). For example, in Ontario, "a proceeding based on" assault or battery in the intimate partner context is exempted from limitation periods (*Limitations Act, 2002*, ss. 1, *sub verbo* "assault", and 16(1)(h.2); *Malamas*, at paras. 42-44). However, the proposed new torts are not similarly reflected in these exemptions exactly because they are unprecedented. Further litigation will be needed to resolve how the new torts are addressed under the varied limitations statutes across the country.

[395] My colleague Kasirer J. states that existing torts are inadequate in part because claims arising from intimate partner violence may not benefit from special exemptions in the limitations statutes, if they do not involve assault or battery between intimate partners (para. 158, citing *Colenutt v. Colenutt*, 2023 ABKB 562, 95 R.F.L. (8th) 176). But he rightly acknowledges that recognizing a new tort of intimate partner violence will not solve this problem. Exemptions from limitation periods that require the claim to involve an assault or battery are unlikely to apply when there has been no assault or battery, whether the claim is made under existing torts or a newly created one. As Professors Sowter and Koshan acknowledge, "recognition of the tort of family violence . . . likely require[s] amendment of limitations legislation" (pp. 333-34).

[396] Further, no practical guidance is provided to lower courts on the damages to be awarded under my colleagues' new torts, in the way that Sharpe J.A. did in *Jones*

regarding the appropriate approach to damages in cases of intrusion upon seclusion when the plaintiff has suffered no pecuniary loss (paras. 74-88). Nor is there any explanation of how damages under the new torts should compare to the existing torts, or guidance regarding how these principles apply to Ms. Ahluwalia's claim. As a result, I fear that lower courts will have great difficulty quantifying damages under these new torts.

[397] In my respectful view, these serious concerns highlight how creating a new tort in this case represents "complex changes to the law with uncertain ramifications", rather than an incremental judicial modification (*R. v. Salituro*, [1991] 3 S.C.R. 654, at p. 666). The different formulations of the new tort advanced by my colleagues risk creating "new and greater difficulties" and could "foster uncertainty and incoherence"; they are, with respect, exactly the kind of changes in the law that this Court has consistently warned against (see *Chandos Construction Ltd. v. Deloitte Restructuring Inc.*, 2020 SCC 25, [2020] 3 S.C.R. 3, at para. 39, citing *Watkins v. Olafson*, [1989] 2 S.C.R. 750, at p. 762). In my view, the proposed new torts are not an incremental development of the common law.

III. Conclusion

[398] Intimate partner violence is already actionable in Canada, and tort law must continue to evolve to address it more effectively. In this case, Ms. Ahluwalia claimed $100,000 in damages for the violence she suffered, and she received $100,000 under existing torts, sensitively applied to her circumstances. There is no basis to interfere with that result. Accordingly, there are no facts that cry out for a remedy. This is not an appropriate case in which to recognize a new tort.

[399] To create a new tort in this case, one must disregard that Ms. Ahluwalia never sought the recognition of a new tort at trial and has received everything she claimed by way of damages under existing law. One must deny Ms. Ahluwalia full compensation under the existing torts, even though interfering with this aspect of the trial judge's order lies beyond the scope of this appeal, was never raised by any party, and concerns an issue on which the parties have had no opportunity to be heard. One must overlook the significant body of jurisprudence demonstrating that lower courts can and do apply the existing torts to give meaningful remedies to plaintiffs like Ms. Ahluwalia. One must design the elements of a new tort without the benefit of supportive comparative law, judicial decisions, or academic commentary. And one must accept the risk of confusion and complexity in family courts, as litigants and trial judges attempt to make sense of a new legal framework. With great respect for contrary views, I am unable to agree with such an approach.

[400] I would therefore dismiss the appeal. Since the parties agreed not to seek costs before this Court, I would make no order as to costs.

Appeal allowed in part, CÔTÉ, ROWE *and* JAMAL JJ. *dissenting.*

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