

BRIEFING NOTE

Intimate Partner Violence (IPV) Recognized as a Novel Tort by Canada's Highest Court

Introduction

The Supreme Court of Canada (“SCC”) has recently released its decision in *Ahluwalia v. Ahluwalia*,¹ with six of the nine judges recognizing a novel tort of intimate partner violence (“IPV”), which comprises intentional coercive control that “directly interferes with the plaintiff’s legal interests in dignity, autonomy, and equality within an intimate partnership.”²

Intimate Partner Violence

In 2022 in Canada there were over 117,000 victims of reported violence by an intimate partner.³ IPV concerns intimate partnerships, which the SCC states is defined in law as a relationship between equals, marked by intimacy, interdependence and respect. IPV can include financial, emotional, mental, verbal or physical acts by an intimate partner, but may address other forms of coercion and control by the other partner.

Procedural History

In *Ahluwalia*, the parties were married for sixteen years and had two children together. In 2016, the husband initiated divorce proceedings against the wife. She sued in tort, seeking damages for years of physical, emotional, mental, and verbal abuse by the husband.

At the trial level,⁴ Mandhane J. awarded the wife \$150,000 in damages, determining that existing torts did not fully encompass the harm associated with the patterns of coercion and control by the defendant against the plaintiff. The trial judge further recognized a novel tort of family violence, noting that this was a rare circumstance where the common law should recognize a new basis for tort liability.

The subsequent appeal was allowed in part by Benotto J.A., Trotter J.A. and Zarnett J.A. who determined that the existing torts of assault, battery and intentional infliction of emotional distress (“IIED”) were sufficient to compensate

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¹ *Ahluwalia v. Ahluwalia*, 2026 SCC 16 [*Ahluwalia* SCC]

² *Ahluwalia* SCC paragraph 5

³ D. M. Sowter, “Intimate Partner Violence and Ethical Lawyering: Not Just Special Rules for Family Law” (2024), 102 Can. Bar Rev. 130, at p. 134

⁴ *Ahluwalia v. Ahluwalia*, 2022 ONSC 1303

the extent of the physical and emotional abuse inflicted by the husband, and that the recognition a new tort of family violence was not required.⁵

SCC Decision

The SCC decision granted leave to appeal the trial decision recognizing a new tort of family violence. The majority six judges discussed both the processes of creating a new tort and the requirements for establishing the tort of IPV, whereas the three dissenting judges ruled that the plaintiff had been fully recompensed without the need to create a new tort.

A) The Recognition of a New Tort

The SCC discussed three principles that support when a court should recognize a new tort:

- 1) The facts of a case demonstrate a wrongful act that offends a recognized legal interest in private law;
- 2) Existing remedies are inadequate; and
- 3) The novel tort must be proper way of addressing the wrong that is consistent with the role of the courts in the development of the law.

i. Wrongful Act That Offends a Recognized Legal Interest in Private Law

To satisfy the first step, the alleged wrongful conduct must be disclosed in the facts presented by the plaintiff, disclosing conduct that offends a recognized legal interest in private law. The SCC discussed how the recognition of a new tort of IPV, designed to address a distinct wrong not addressed by existing torts, would encourage victims to take legal action for injuries suffered, consider access to justice implications and assist both lawyers and judges in responding with an appropriate understanding for IPV.

ii. Existing Tort Remedies Must be Inadequate

To satisfy the second step, the existence of torts and remedies unable to address the alleged wrong makes it necessary for a novel tort to be established. The SCC stated that at the centre of IPV is the wrongful interference with an intimate partner's autonomy, which results in an unequal partnership. This is noted as a distinct harm from other torts, such as trespass to the person, assault, battery, or IIED.

iii. The Novel Tort is Made Specifically to Address the Wrongful Act

For the third step, a well-established tort depends on the factual, legal and social context in which it is created. The SCC determined that the trial judge in the creation of the tort of family violence did not adequately respond to the wrongful conduct at issue. Further, the SCC stated that the ONCA did not recognize that the wrongs which come from IPV are entirely different and not captured by existing torts. IPV deprives an individual of their autonomy, resulting in an unequal partnership and overall loss of dignity, which persists after each instance of abuse.

⁵ *Ahluwalia v. Ahluwalia*, 2023 ONCA 476

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B) *The New Tort of Intimate Partner Violence*

The Court then turned to the question of the foundational elements for an IPV claim. A claimant must establish that:

- 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.

i) *The Abusive Conduct Arose in an Intimate Partnership or its Aftermath*

Under this element the plaintiff must demonstrate that the conduct arose during the context of an intimate partnership or in its aftermath. The Court highlighted that the fact that parties have formally ended their relationship does not end the potential for IPV.

ii) *The Defendant Intentionally Engaged in that Conduct*

Under this element the plaintiff must prove that the defendant intended to control or coerce, which can include inferring it from a cumulative pattern of conduct. The Court listed a non-exhaustive list such as threatening conduct, humiliation, financial control, or stalking.

iii) *The Conduct, on an Objective Measure, Constitutes Coercive Control*

Under this element the plaintiff must demonstrate the harmful conduct, on an objective measure, constitutes coercive control. The trial judge must determine whether a reasonable person, fully aware of the context of the relationship, would have perceived the defendant's acts as amounting to an assertion of control over the plaintiff to the effect of depriving them of their dignity, autonomy and equality in their intimate relationship.

C) *Quantifying Damages and Limitation Period*

Once these three elements have been established, and liability has been found, a trial judge may award general compensatory damages to the plaintiff for the harm to dignity, autonomy and equality suffered due to coercive control.

The SCC did not enforce a universal limitation period for this novel tort.

Conclusion

With the growing statistics of IPV rising in Canada, the creation of the novel tort of IPV is a new legal tool which allows victims of IPV to seek financial compensation for the distinct injury to their interests in dignity, autonomy and equality within an intimate relationship. Despite some overlap with existing torts, IPV is distinguished in that it considers if the alleged wrongful conduct coerces or controls the victim.

It has been almost two decades since the SCC established a novel cause of action (i.e., the tort of negligent investigation in 2007).⁶ *Ahluwalia* is not only a landmark

⁶ *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41

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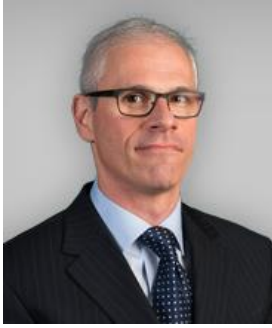
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decision surrounding the socially pervasive topic of IPV, but it is also a significant development in the evolution of tort law.



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Emma Halvorsen is a summer articulated student at Guild Yule LLP. She is presently a law student at Thompson Rivers University and is expected to complete her studies in 2027. Emma is interested in the areas of health law, employment law, human rights law and insurance litigation.

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