

July 7, 2023

Compensation for survivors in Ontario is available, but the tort of coercive control and family violence is not recognized.

Marginalized survivors of intimate partner violence and other forms of abuse face limited access to resources in Ontario. They also have very limited access to compensation for their experience of violence and suffering, sometimes less than a person who might experience a road accident. The Ontario Court of Appeal in its decision in *Ahluwalia v Ahluwalia* on Friday, July 7, 2023, agreed “it is axiomatic that intimate partner violence must be recognized, denounced and deterred” but – unfortunately – missed the opportunity to affirm the tort of family violence.

Family violence is abuse directed against one or more individuals that is perpetrated by a family member. It operates as a system of control and domination and is characterized by a pattern of repetitive abuse, often in conjunction with coercive and controlling behaviour, which may include harassment, manipulation, economic abuse, physical or sexual violence, and psychological abuse. In the context of intimate or family relationships, the breach of trust inherent in this abuse compounds and exacerbates the harms suffered by survivors. As one of the interveners in *Ahluwalia*, we argued that the tort of family violence would fill a gap in our existing system of tort law, which fails to adequately capture the wrongdoing at the core of family violence.

Kuldeep Kaur Ahluwalia alleged that her husband engaged in physical and emotional abuse and financial control throughout their 16-year marriage. The trial court found this abuse did occur, and recognized in the abuse a pattern that pervaded the marriage and poisoned the relationship of trust between the spouses. To compensate Ms. Ahluwalia for the harm she suffered as a result of this family violence, the trial judge awarded her \$150,000 in damages. The Ontario Court of Appeal agreed the survivor should be compensated but made this finding on the basis of existing torts rather than the tort of family violence. It also reduced her damages award to \$100,000.

In declining to recognize the tort of family violence, the Court of Appeal found that existing torts like assault and battery are “flexible enough to address the fact that abuse has many forms” and may be made out based on patterns of conduct. This approach fails to take into account a gap in the patchwork of existing torts, none of which address the insidious and compounding nature of an ongoing breach of trust in the context of an intimate or family relationship.

Additionally, the Court overlooked the complex impact of systemic violence on the lives of survivors. In the Clinic's experience, the harms arising from family violence are made worse by the intersecting experiences of oppression, racism and marginalization lived by many of our clients. Oppression, racism, and marginalization increase barriers to safety and independence for survivors of family violence and must be accounted for when accessing services or resources, as well as when assessing financial compensation.

Family and criminal law have been evolving to recognize the impacts of family violence. In the family law regime, family violence must be considered when assessing the best interests of children but is not taken into account in the sharing of family assets or spousal support for the less financially secure spouse. The failure of the civil courts to recognize an action for family violence is inconsistent with those legislative changes provincially and nationally, and out of step with our obligations pursuant to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW").

The Court of Appeal acknowledged that violence is a pervasive social problem and confirmed the need for financial compensation, which can provide many survivors with a better chance at recovering a safe and self-sustaining life. Survivors of years of violence by abusive partners often face many barriers to recovering health, well-being, self-esteem, and independence. It is disappointing that the Court failed to affirm the new civil remedy that would have more accurately reflected the lived experience of survivors of family violence.

While this is not the outcome that we hoped for, we are thankful to survivors like Ms. Ahluwalia for bringing their stories forward. The Clinic remains committed to supporting the fight to protect survivors by recognizing and condemning family violence and its impacts. We are hopeful that this case will encourage survivors of family violence to seek financial damages and we will continue to work for more effective change in this area of law.