THE VIOLATION OF WOMEN – TOWARDS A CLEARER CONSCIOUSNESS

LOIS G. MACDONALD*

The author examines the dynamics of power and control underlying the violation of women in society. This violation, she argues, is caused not by independent, isolated incidents by aberrant individuals, but rather, by societal behaviours and attitudes which systematically discriminate and oppress women. The author also demonstrates how the legal system in its reliance on the "battered woman syndrome" perpetuates the marginalization of women. This condition is further worsened by use of terminology which negatively characterises women. The important questions of why women are allowed to be violated in our society and how this violation can be prevented remain unacknowledged and unanswered. The author concludes that there are no simple solutions to achieve the goal of eradicating the violation of women and calls for the establishment of substantive means to effectively meet the goal and prevent it from becoming a mere ideal.

L'auteure examine la dynamique du pouvoir et du contrôle qui sous-tend les abus dont sont victimes les femmes dans la société. Cette situation, soutient-elle, ne résulte pas d'incidents indépendants et isolés perpétrés par des individus anormaux mais plutôt d'attitudes et de comportements discriminatoires systématiques qui oppriment les femmes. L'auteure démontre aussi comment le système judiciaire, en reposant sur le «syndrome de la femme battue» perpétue la marginalisation de la femme. La situation est encore aggravée par le recours à une terminologie qui caractérise négativement les femmes. Les questions importantes, portant sur ce qui autorise un tel traitement des femmes dans notre société et sur ce qui permettrait de le prévenir restent ignorées et sans réponses. L'auteure conclut qu'il n'existe pas de solutions simples pour parvenir à éliminer ce problème et réclame la mise sur pied de moyens importants qui permettront d'atteindre ce but et d'empêcher qu'il ne devienne un simple idéal.

TABLE OF CONTENTS

I. INTRODUCTION 900
A. LANGUAGE 905
B. THE POLITICS OF THE VIOLATION OF WOMEN AND THE LAW 912
II. CONCLUSION 922

I. INTRODUCTION

The war is men against women[1]

Society has become much more aware of the violation of women[2] by their mates in the years since 1982 when Canadian politicians greeted the startling statistics on "wife

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* Assistant Professor, Faculty of Law, University of Windsor.

1. "Letter from a War Zone" in A. Dworkin, *Letters from a War Zone: Writings 1976-1987* (1988) at 308. However, care must be taken not to view this war as "two battalions neatly arrayed on either side of the line": to do so misses "the entangled nature, the locked embrace, of a 'war' between women and the male culture they inhabit. We miss the reactive nature of a backlash, which, by definition, can exist only in response to another force": S. Faludi, *Backlash: The Undeclared War Against American Women* (1991) at xxi.

2. See text accompanying notes 24 *et seq* for reasons for the use of this term.

abuse" with guffaws.[3] However, a recent study has acknowledged that there is yet no clear understanding of how to prevent the violation of women by their mates.[4] Moreover, it appears chillingly evident that there is no political will to end hostilities against women.

For example, in June 1991, a House of Commons subcommittee published *War Against Women*, a report describing the horrific condition of women in Canadian society and proposing numerous recommendations to act as first steps in eliminating the violation of women.[5] The title of the report was greeted with contempt, with four MPs on the parent committee finding the word "war" offensive and inflammatory, with some of its contents appearing "to classify all men as evil, that women cannot trust men, that men and women are enemies."[6] Consequently, the parent committee refused to approve the sub-committee's report, and it was tabled in Parliament unsigned, unendorsed, and therefore "with less moral authority."[7] The Government's response to the report, issued in November 1991, further demonstrated a lack of political will to institute change.[8] Behind platitudes to the effect that the Government is committed to resolving the issue of violence against women, the *Response* indicated the Government's unwillingness to expend the monies necessary to improve services for violated women and their violators or to change social attitudes and behaviours.[9] In short, the *Response* refuses to acknowledge the reality of the state of seige under which women exist in Canadian society.[10]

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3. When the shocking statistics that one in ten women in an intimate relationship is abused by her mate from L. MacLeod, *Wife Battering in Canada: The Vicious Circle* (Canadian Advisory Council on the Status of Women, 1980) at 7 [hereinafter *Vicious Circle*] were placed before the Canadian Parliament, many of Canada's federal politicians laughed, with at least one politician hollering out "I don't beat my wife.": Canada, House of Commons, *Debates*, (12 May 1982) at 17334.

4. L. MacLeod, *Preventing Wife Battering: Towards a New Understanding, A Think-Tank Report* (Canadian Advisory Council on the Status of Women, 1989) at 1 [hereinafter *Think-Tank*].

5. Canada, House of Commons, Standing Committee on Health and Welfare, Social Affairs, Seniors and the Status of Women, First Report, *The War Against Women* (June, 1991) [hereinafter *Parliamentary Report*].

6. Conservative MP S. Wilbee: "Violence and Women" (Editorial), *The Windsor Star* (28 June 1991) A8.

7. Liberal critic M. Clancy: *National* (CBC Television broadcast) (25 June 1991).

8. Canada, Status of Women, *Living without Fear ... Everyone's Goal, Every Woman's Right*, the Federal Government Response to the Report of the Standing Committee on Health and Welfare, Social Affairs, Seniors and the Status of Women: "The War Against Women" (November 1991) [hereinafter *Response*].

9. In one especially "enlightening" statement, the *Response* indicated that, although public education campaigns on violence against women can be effective in helping change public attitudes, "it would be important that any public education campaign be designed to have minimal impact on the demand for services." *Ibid.* at 7.

10. I do not, in any way, wish to imply by the term "Canadian society" that there is one homogenous group with the same perspectives and experiences within the nation. However, from a statistical point of view, it is difficult, if not impossible, to find a comprehensive breakdown of information in respect of the violation of women according to sexual orientation, ethnic, religious, racial, socio-economic and other pertinent factors.

The first Canadian study on "wife battering" simply indicated that the problem of the violation of women by their mates was not confined to legally married couples or to heterosexual couples: MacLeod, *supra*, note 3 at 7. A later Canadian study by the same author merely acknowledged, in one brief section, the "double isolation" of some of the various sub-groups of violated women — women living in rural areas, aboriginal women, immigrant women, teenaged women, disabled

The reality is that, although the incidence of the violation of women in society is seriously under-reported,[11] statistics and empirical studies do demonstrate that the violation of women is endemic in society;[12] however, these numbers, while providing ephemeral shock value, tend to desensitize society to the horror of the violation of women.[13] The reality is that women are constantly being subjected to the sexism, heterocentrism, homophobia, racism and misogyny depicted in mass media; the pornographic depiction of women as sex objects; the learned (conditioned) fear of potential sexual, verbal and physical assault and harassment; the backlash against feminist pursuits; the disbelief of society when confronted with "tales" of violation and degradation of women; and the continuing socialization which consistently affirms the oppression and subrogation of women in society.[14]

The reality is that women are being symbolically murdered[15] through acts and behaviours aimed at their degradation, their humiliation, their exile, their violation.

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women, women on military bases. However, there was no breakdown of the figures in the study amongst the various groups in society: L. MacLeod, *Battered but not Beaten...Preventing Wife Battering in Canada* (Canadian Advisory Council on the Status of Women, 1987) at 19-30 [hereinafter *Preventing*]. In the recent *War Against Women*, the Parliamentary subcommittee acknowledged that, although many of the issues and concerns expressed by aboriginal women's groups are shared by all victims of violence, certain issues and the solutions must be tailored to reflect their community life, culture and traditions, and recommended the establishment of a task force on family violence in aboriginal communities. *Supra*, note 5 at 49. Further, the Report briefly recognized the compounded problems, in this area, of women who are disabled, poor, or in prison, and immigrant and visible minority women.

11. *Supra*, note 5 at 5.

12. For example, one in four women will be sexually assaulted at some time in their lives, half before the age of 17; every 17 minutes there is a sexual assault committed in Canada and 90% of the victims are female; of Aboriginal women surveyed in a recent study by the Ontario Native Women's Association, 80% had been assaulted or abused; at least 1 in 10 women is physically and/or sexually assaulted each year by a mate or ex-mate; approximately 60% of women physically or sexually assaulted by their mates are injured; 62% of all women killed in Canada are killed by their mates. *Ibid.* at 6-7.

13. A 1987 U.S. study indicated that, *every day*, 10 women are killed by their violative mates — over 3600 in a year: G. Kirshenbaum, "Why Aren't Human Rights Women's Rights?" (1991) 2:1 *Ms.*, citing statistics from the National Coalition Against Domestic Violence. However shocking this figure may appear, it can, unfortunately, be lost in the overall number of homicides in the U.S. per year — in 1987, over 20,600; in 1989, 21,500. See in general, Statistics Canada, *Homicide Survey of the Canadian Centre for Justice Statistics* (1989) [hereinafter Statistics Canada], and National Coalition Against Domestic Violence in the U.S.

Linda MacLeod has indicated in her studies of "wife battering" in Canada that statistics can have a positive influence on raising society's awareness in respect of the existence and seriousness of a previously hidden problem. However, mere statistical analysis can oversimplify the problem; moreover, if the numbers go down, public and institutional support for the problem may decrease, and if the numbers go up, critics can either argue that the figures are being inflated or conclude that any programs in place to remedy the problem are ineffective and should be cancelled. MacLeod, *Preventing*, *supra*, note 10 at 7.

14. These are but a few of the unquantifiable — but pernicious — ways in which women are violated.

15. This expression is from Jean-Paul Sartre in his discussion of anti-semitism: *Refléxions sur la question juive* (1954) at 59-60. The English translation is J.P. Sartre, *Anti-Semite and Jew*, trans. G.J. Becker (1965) — all subsequent references are to the translated version.

The reality is that women are being literally and brutally murdered — their spirit, their will to live, their bodies — by rape,[16] torture[17] and killing.

The reality is femicide.[18]

The endemic nature of the violation of women in society cannot but demonstrate that the forces behind the violation are caused, not by independent, isolated incidents of aberrant individuals, but by the societal behaviours and attitudes which systematically and persistently discriminate, degrade and oppress women. The issue of the violation of women by their mates is not distinct from the violation of women in society in general; in fact, it affirms a particular social order.[19] However, the institution of the family has long been treated as a separate sphere, and thus immune from both societal interest and intervention, which has ensured that the further subordination of women by their mates remains, to a large extent, a private issue.[20]

The eradication of the violation of women will require a radical change in societal behaviours and attitudes in respect of women, a change necessitating proactive and collective measures to be effectuated by all aspects of society. Unfortunately, much of the commentary on the violation of women by their mates persists on focusing on the

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16. Women who have been sexually assaulted are approximately five times more likely to have a nervous breakdown, six times more likely to attempt suicide, and eight times more likely to commit suicide or die prematurely. *Supra*, note 5 at 11.

17. The emotional and physical abuse and torture of a woman being violated by her mate escalate over time L.E. Walker, *Battered Women Syndrome* (1984) at 148 [hereinafter "*Syndrome*"] — often to the point where the woman is killed by her torturer — a brutal situation of "murder by installment": A.D. Eisenberg & E.J. Seymour, "The Self-Defense Plea and Battered Women" (1978) 14:7 Trial 34 at 41.

18. This term is taken from J. Caputi & D.E.H. Russell, "'Femicide': Speaking the Unspeakable" (1990) 1:2 *Ms.* 34. The authors state that

> *femicide* best describes the murders of women by men motivated by hate, contempt, pleasure, or a sense of ownership of women"; and "includes mutilation murder, rape murder, battery that escalates into murder; historical immolation of brides and widows in India; and 'honour crimes' in some Latin and Middle Eastern countries, where women believed to have lost their virginity sometimes are killed by male relatives. *Ibid.* at 34-35.

19. M.D.A. Freeman, "Violence Against Women: Does the Legal System Provide Solutions or Itself Constitute the Problem?" (1980) 3 Can. J. Fam. L. 376 at 378. "[V]iolence is functional and not dysfunctional. Violence against women is a necessary concomitant of the oppressed and dependent position that women occupy in the social structure."

See also C. MacKinnon, "Feminism, Marxism, Method, and the State: Toward a Feminist Jurisprudence" (1983) 8 Signs, Journal of Women in Culture and Society 635 at 651 note 36 & 656 note 46 [hereinafter "Jurisprudence"].

20. MacKinnon, *ibid.* at 657 states:

> To fail to recognize the place of the private women's subordination by seeking protection behind a right to that privacy is thus to be cut off from collective verification and state support in the same act. The very place (home, body), relations (sexual), activities (intercourse and reproduction), and feeling (intimacy, selfhood) that feminism finds central to women's subjection form the core of the privacy doctrine.

For an excellent discussion of the problems with the public/private dichotomy and the "private sphere" of the family, see F.E. Olsen, "The Family and the Market: A Study of Ideology and Legal Reform" (1983) 96 Harv. L. Rev. 1497.

individual characteristics of the violated woman and of the violator as well as the *individual* physical and psychological consequences of the violation,[21] rather than regarding the violation of women by their mates as a particular prototype of the violation perpetrated on women in general as a result of socio-political forces. The result is that women who are violated by their mates through physical, verbal, emotional and psychological terrorism and warfare are some of the most marginalized people in society; their horrific plight, and their deaths,[22] are ignored by most facets of society.

By examining the dynamics of power and control which underlie the violation of women in society, this article will demonstrate how the legal system, especially in its reliance on the "battered woman syndrome," perpetuates the marginalization of violated women. Their condition is further stereotyped by the use of terminology which often negatively characterizes them, terminology which continues to be used for "convenience," despite the recognition by commentators that many of the terms are indeed problematic.[23]

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21. In Canada, see in general, MacLeod, *Vicious Circle*, *supra* note 3 and *Preventing*, *supra* note 10; D.J. Brodsky, "Educating Juries: The Battered Woman Defence in Canada" (1987) 25 Alta L. Rev. 461; E. Cormack, "Women Defendants and the 'Battered Wife Syndrome': A Plea for the Sociological Imagination" (1987) 5:12 Crown Couns. Rev. 6 [endnotes found at (1988) 5:13 Crown Couns. Rev. at 15-16] [hereinafter "Plea"]; N.Z. Hilton, "One in Ten: The Struggle and Disempowerment of the Battered Women's Movement" (1989) 7 Can. J. Fam. L. 313; L. Stuesser, "The 'Defence' of 'Battered Woman Syndrome' in Canada" (1990) 19 Man. L. J. 195; A.M. Boisvert, "Légitime défense et le 'syndrome de la femme battue'": "*R.* c. *Lavallée*" (1991) 36 McGill L.J. 191; and R.A. Schuller, "The Impact of Battered Woman Syndrome Testimony on Jury Decision Making: *Lavallée* v. *R.* Considered" (1991) 10 Windsor Yearb. Access Justice 105.

In the U.S., see, in general, C.P. Ewing, *Battered Women Who Kill: Psychological Self-Defense as Legal Justification* (1987); Walker, *Syndrome*, *supra*, note 17 and *Terrifying Love: Why Battered Women Kill and How Society Responds* (1989) [hereinafter "*Terrifying*"]; J.R. Acker, & H. Toch, "Expert Testimony: A Comment on *State* v. *Kelly*" (1985) 21 Crim. L. Bull. 125; V.M. Mather, "The Skeleton in the Closet: The Battered Woman Syndrome, Self-Defense, and Expert Testimony" (1988) 39 Mercer L. Rev. 545; M. Mihajlovich, "Does Plight Make Right: The Battered Woman Syndrome, Expert Testimony and the Law of Self-Defense" (1987) 62 Ind. L. J. 1253; R.K. Thyfault, "Self-Defense: Battered Woman Syndrome on Trial" (1984) 20 Cal. W. L. Rev. 485; and M.H. Mitchell, "Does Wife Abuse Justify Homicide?" (1978) 24 Wayne L. Rev. 1705.

For an international reference, see S. Graff, "Battered Women, Dead Husbands: A Comparative Study of Justification and Excuse in American and West German Law" (1988) 10 Loy. L. A. Int'l. & Comp. L. J. 1; and J. Horder, "Sex, Violence, and Sentencing in Domestic Provocation Cases" [1989] Crim. L. Rev. 546 [comparison between the U.S. and the U.K.].

22. The latest Canadian figures indicate that 76 women were killed by their male mates in 1989, which is also the average number of women killed per year by their male mates for the years 1981-1989. Statistics Canada, *supra*, note 13. It should be noted that a significantly higher figure for such homicides (119 in 1989) was given in *War Against Women: Parliamentary Report*, *supra*, note 5 at 7. The difference in numbers could be attributed to a broader notion being given to the mate (for example to include ex-mates) in the latter report.

Unfortunately, the statistics do not provide a breakdown of women victims who were in violative relationships.

During the same period (1981-1989), the average number of men killed by their female mates was 23.7, with 22 being killed in 1989: Statistics Canada, *ibid.*

23. See, for example, MacLeod, *Vicious Circle*, *supra* note 3 at 7 and *Preventing*, *supra*, note 10 at 16; Boisvert, *supra*, note 21 at 192 note 4.

It is interesting to note that 80% of the transition house workers in MacLeod's 1987 study preferred, to "wife battering," a different term which would reflect the multi-faceted nature of the violence, such as "violence against women in the home," "wife abuse," and "domestic terrorism."

Consequently, as an important adjunct to the analysis undertaken in this article, it is necessary to establish terminology which accurately, and as completely as possible, characterizes this problem. Language is not value-neutral and care must, therefore, be taken to ensure that the terms and definitions used do not communicate the wrong message and values.

A. LANGUAGE

> *[O]ne must move...toward speech as part of an emancipatory effort, a movement toward social clarity and self-comprehension*[24]

Throughout this article, I use the term "violation of" women,[25] rather than "violence against (or towards)" women, to characterize the consequences of the colonization,[26] oppression, degradation, and physical, emotional and societal abuse and violence to which women are subjected. "Violence against (or towards) women" connotes something being done *to* a *thing*, an object, with the focus being on the *act*, thus marginalizing the forces behind the act and the consequences of this further socialization on the woman. Some writers argue that the defining of all acts of violence performed in a wide variety of settings by a single term, such as "violence," leads to abstraction. Instead, the argument goes, we must think in terms of "violences," with each type of violence being analyzed and explained "by reference to its unique social, historical and interpersonal characteristics."[27] Although this perspective is somewhat appealing, it has the tendency to compartmentalize or individualize the violation of women, thus diverting attention from the fundamental issue: why are women subjected to violation? The specific consequences of a woman raped by a stranger may indeed be different from those of a woman beaten by the person she loves, which are again different from those of a woman confronted with pornography. Perhaps even the specific explanations of the particular

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The remaining 20% preferred expressions which would emphasize the societal roots and the link between wife battering and all violence against women, expressions such as "abuse," "woman abuse," "women in crisis or distress," and "women robbed of dignity": *Preventing*, *ibid.* at 155.

24. J.B. Elshtain, "Feminist Discourse and Its Discontents: Language, Power, and Meaning" in N.O. Keohane, M.Z. Rosaldo & B.C. Gelpi, eds., *Feminist Theory: A Critique of Ideology* (1982) at 127, 129.

25. I have taken this term from MacLeod, *Think-Tank*, *supra*, note 4 at 26. MacLeod describes this new term as "embrac[ing] feelings and experiences which acknowledge that the diminishment of a person also diminishes our shared moral base, our community, and our respect for life." *Ibid.* at 26. I am using the term in a slightly modified way — to encompass the varied ways in which women are violated, the forces behind the violation, and the diverse consequences of the violation.

26. "False histories, false role models, and false expressions of a people's creative potential together with socially imposed constraints that perpetuate these false belief systems keep the colonized in their place. For the colonial is colonized historically, socially, politically, economically, and personally. The colonizer, through the use of 'tokens' and the aid of 'collaborators' ensures that the colonized remain in a state of 'false' or 'imaginary' consciousness. In other words, the colonized are taught to believe the dominant ideological myths about their collective being, and act accordingly": P. McLaren, & R. Hammer, "Critical Pedagogy and the Postmodern Challenge: Toward a Critical Postmodernist Pedagogy of Liberation" (1989) 3:3 Educ. Found. 29 at 45.

27. R.E. Dobash & R. Dobash, *Violence Against Wives* (1979) at 8-9.

rapist, abuser or pornographer may differ. However, the underlying socio-political forces behind these acts of violation of women are the same.

Other commentators argue for the separate defining and measuring of the consequences (injury) and of the act (type of violence). One of the most important reasons for this separation seems to be to ensure "the consistency with the legal concept of assault"; moreover, the separation makes it possible "to treat the relationship between acts and injuries as an empirically researchable issue."[28] This separation (and focus on individual incidents of violation), however, would merely further the ineffectiveness of the legal system and of statistical analysis in dealing in an effectual and holistic manner with eradicating the violation of women.

The expression "violation of women," on the other hand, encaptures both the dehumanizing effect of the violation,[29] rendering the woman a "non-person,"[30] and the fundamental aspect that the woman's violation is a sexual act.[31] We must acknowledge that the power dynamics underlying the violation reflect gender inequality in society — women have been defined as sexual beings; violence has been eroticized; dominance is thus fused with sexuality.[32] The sexual component of such violation cannot be better explained than through the perspective of a violated woman herself:

> As a married woman I have no recourse but to remain in the situation which is causing me to be painfully abused. I have suffered physical and emotional battering and spiritual rape because the social structure of my world says I cannot do anything about a man who wants to beat me...I have learned that no one believes me...I have learned also that the doctors, the police, the clergy, and my friends will excuse my husband for distorting my face, but won't forgive me for looking bruised and broken.[33]

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28. S.L. Feld, & M.A. Straus, "Escalation and Desistance of Wife Assault in Marriage" (1989) 27 Criminology 141 at 143 note 2.

29. From its etymology, "to violate" means to treat with violence, injure, dishonour, ravage, rape, transgress, infringe, desecrate, and is probably related to strength and force. See, in general, E. Klein, *A Comprehensive Etymological Dictionary of the English Language* (1971) at 812 and C.T. Onions, ed., *The Oxford Dictionary of English Etymology* (1966) at 982.

30. For greater discussion of the effects of the violation, see, in general, A. Browne, *When Battered Women Kill* (1987); Walker, *Syndrome*, *supra*, note 17; Dworkin, *supra*, note 1; and Dobash & Dobash, *supra*, note 27.

31. In fact, "sexuality appears as the interactive dynamic of gender as an inequality": C. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (1987) at 6 [hereinafter *Feminism*]. See, also, C. MacKinnon, "Feminism, Marxism, Method, and the State: An Agenda for Theory" (1982) 7 Signs, Journal of Women in Culture and Society 194 at 195.

> Sexuality is that social process which creates, organizes, expresses, and directs desire, creating the social beings we know as women and men, as their relations create society...[T]he organized expropriation of the sexuality of some for the use of others defines the sex, woman.

In fact, Walker found that "sex was used as a power weapon to dominate the woman in the same manner that [batterers] used physical violence" and that the batterer's unreasonable jealousy was usually "sexual in nature." *Syndrome*, *ibid.* at 149 and in general Chapter 5.

32. MacKinnon, *Feminism*, *ibid.* 92.

33. A letter by a violated woman cited in D. Martin, *Battered Wives* (revised & updated) (1981) at 3 & 4.

Unfortunately, the most oft-cited definitions of a "battered" (violated) woman do not denote the dynamics of gender inequality and of power and domination. One of the first definitions of a "battered" woman, provided by Lenore Walker in her seminal study of "wife battering," appears, perhaps inadvertently, to *blame the woman*:

> ...a woman who is repeatedly subjected to any forceful physical or psychological behaviour by a man in order to coerce her to do something he wants her to do without any concern for her rights. Battered women include wives or women in any form of intimate relationships with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman.[34]

Although Walker subsequently refined the definition, the focus still ignored the larger social and political dynamics of the violation of women and reflected a definite heterosexist perspective:

> ...a woman, 18 years of age or over, who is or has been in an intimate relationship with a man who repeatedly subjects or subjected her to forceful physical and/or psychological abuse.[35]

One of the first Canadian definitions did attempt to reflect a much broader social perspective:

> Wife battering *is* violence, physical and/or psychological, expressed by a husband or a male or lesbian live-in lover toward his wife or his/her live-in lover, to which the "wife" does not consent, and which is directly or indirectly condoned by the traditions, laws and attitudes prevalent in the society in which it occurs.[36]

The author, criticizing her definition for failing to reflect the multifaceted nature of the violation, the growing awareness of the psychological violence as a central element of the abuse, and the persistence of the abuse, formulated a significantly improved definition, although the focus remains on the *individual* aspects of the abuse:

> Wife battering is the loss of dignity, control, and safety as well as the feeling of powerlessness and entrapment experienced by women who are the direct victims of *ongoing or repeated* physical, psychological, economic, sexual and/or verbal violence or who are subjected to *persistent* threats or the witnessing of such violence against their children, other relatives, friends, pets and/or cherished possessions, by their boyfriends, husbands, live-in lovers, ex-husbands or ex-lovers, whether male or female. The term "wife battering" will also be understood to encompass the ramifications of the violence for the woman, her children, her friends and relatives, and for society as a whole.[37]

Despite the modifications made to the definitions, the emphasis remains on the persistence and the multi-faceted nature of the violation without sufficient

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34. L.E. Walker, *The Battered Woman* (1979) xv [hereinafter *Battered*].
35. Walker, *supra*, note 17 at 203.
36. MacLeod, *supra*, note 3 at 7 [emphasis in original].
37. MacLeod, *Preventing*, *supra*, note 10 at 16 [emphasis and quotation marks in original].

acknowledgement of the socio-political aspects of the violation.[38] A more appropriate description can be found in a definition of Lesbian battering,[39] in which the violation of women by their mates is viewed as a "pattern of intimidation, coercion, terrorism or violence, the sum of all past acts of violence and the promises of future violence, that achieves *enhanced power and control for the perpetrator*" over the mate:

> Lesbian battering is that pattern of violence and coercive behaviours whereby a lesbian seeks to control the thoughts, beliefs or conduct of her intimate partner or to punish the intimate for resisting the perpetrator's control over her...Physical violence is not battering unless it results in the enhanced control of the batterer over the recipient.[40]

In light of the importance of the dynamics of power and powerlessness, the expression "violation of women," and its derivatives, appear significantly more appropriate than the more common terms — "battering" and "abuse" — which emphasize the pathological and physical violence, and which have been used (in particular "battering") to isolate and stigmatize women, and to characterize them solely as victims.[41] Moreover, the term emphasizes the gender-specific aspect of the violated woman,[42] is not heterocentric,[43] and does not fall into the trap of implying complicity on the part of the women, as does the term "partner" to describe the violator. In short, the term "violation of women," by underscoring the power dynamics involved as well as the individual damage done to the

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38. See, for example, D.L. Faigman, "The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent" (1986) 72 Va. L. Rev. 619 at 644; and Cormack, *supra*, note 21 at 8.

39. The fact that the dynamics described in this definition involve a Lesbian relationship is immaterial — it is the power and control exerted by the violator, and their effects of powerlessness and lack of control on the violated woman, which must be acknowledged, whether in a heterosexual or homosexual relationship. See, also, MacLeod, *supra*, note 3 at 7.

40. B. Hart, "Lesbian Battering: An Examination" in K. Lobel, ed., (for the National Coalition Against Domestic Violence — Lesbian Task Force), *Naming the Violence: Speaking Out about Lesbian Battering* (1986) at 173 & 174 [emphasis added].

41. *Supra*, note 4 at 26.

42. Many authors use the terms "wife," "husband," "boyfriend," "marriage," "spouse," and "common-law" to maintain the gender-specific nature of the violence. See, for example, Schuller, *supra*, note 21 at 106 note 2, and to focus on the fact that the violation cannot be separated from the family context or from the "husband" and "wife" roles which exist both within and without legal marriage. See, for example, MacLeod, *Vicious Circle*, *supra*, note 3 at 7. It is indeed important not to de-genderize the issue by speaking in terms of "spousal abuse" or "domestic violence," which not only objectify and neutralize, but also ignore, the sociological and political perspectives of the problem. However, we must acknowledge that the family aspects of this violation do not reflect the entire perspective of the problem: for example, many people specifically choose not to marry in order to escape the (legal) and traditional trappings of marriage; people can be involved in a violative and intimate relationship without living under the same roof; the violation can continue even after the violated woman has severed all relationships and ties with her violative mate.

43. Most current terminology demonstrates a definite heterocentric bias. We must acknowledge that the violation is not exclusively a male-female phenomenon, but rather an issue of *control*. See, in general, D.J. Cecere, "The Second Closet: Battered Lesbians" in Lobel, *supra*, note 40 at 21 & 29. In this way, several homophobic myths can be falsified: in fact, the violation of women in lesbian relationships is not limited to "bar dykes" or to couples strictly locked into the "butch/femme" roles, and feminist lesbians do engage in the violation of women: A. Strach & N. Jervey (with assistance from S.J. Hornsatein and N. Porat), "Lesbian Abuse: The Process of The Lesbian Abuse Issues Network (LAIN)" in Lobel, *ibid.* at 88-89.

woman (emotional, psychological, physical) and the societal or collective causes and consequences of this violation on women in general (image of women as objects of sex and domination), renders a more complete perspective to the problem.[44]

1. "Battered Woman Syndrome"

The terminological problem inherent in the commonly-used definitions of "battered women" is magnified with the term "battered woman (or women or wife) syndrome,"[45] a term used to describe both "the patterns of violence typically experienced by battered women and the psychological impact that this violence has on women."[46]

Briefly stated, the "battered woman syndrome"[47] consists of two theoretical concepts: "learned helplessness" and the "cycle of violence."[48] The "cycle of violence" involves

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44. I do not wish to imply that there is no such violation of men by their mates in both heterosexual and homosexual relationships, but, research clearly indicates that the violation by mates is overwhelmingly directed at women. See *supra*, note 27 at 20.

Statistics indicate that, in heterosexual relationships, the man is the victim of this type of violation "in no more than 5% of all assaults by one spouse against another." *Parliamentary Report*, *supra*, note 5 at 6. However, it is unclear whether psychological and emotional abuse is included in this figure; my own opinion is that emotional abuse, in general, of both women and men, is extremely invisible and under-reported.

45. The theory of the "battered woman syndrome" has been attributed to the U.S. psychologist L.E. Walker following her study of over 400 violated women. "The Battered Woman Syndrome Study," National Institute of Mental Health grant #RO1MH30147, L.E. Walker, Principal Investigator. Browne, *supra*, note 30 at Introduction, note 1. The study focused on battered women in the Rocky Mountain region and was conducted from July 1978 to June 1981 by the Battered Women Research Center at Colorado Women's College in Denver, Colorado. Walker, *Syndrome*, *supra*, note 17 at 1.

46. Browne, *ibid.* at 177.

47. For a complete discussion of the "battered woman syndrome," see *supra*, note 34, in particular chapters 2 & 3, and Walker, *Syndrome*, *supra*, note 17, in particular chapters 9 & 10.

48. It should be noted that there has been strong criticism of the methodology used by Walker in her studies of women violated by their mates. Faigman, *supra*, note 38. Faigman not only criticizes Walker's feminist bias which indicates, according to him, that, as a researcher, she is not sufficiently objective *ibid.* at 633, but more importantly criticizes several aspects of her methodology: the use of leading questions; the use of the interviewers' evaluation of subjects' responses, rather than the use of the subjects' direct responses; the failure to relate empirically the cycle of violence to the "cumulative terror" that "purportedly grips the (violated woman who kills her violator) in the interim between the batterer's attacks and her response"; the lack of a control group; and the fact that Walker's data look at the tension and loving contrition phases separately, which do not support her conclusion that there is a distinct behavioral cycle: *ibid.* at 636-638.

These criticisms of Walker's methodology are not fatal, however, in large measure because other studies and analyses have been undertaken which substantiate Walker's work. See, for example, K. Kinsport, "Defending Battered Women's Self-Defense Claims" (1988) 67 Or. L. Rev. 393 at 407 and the independent studies cited therein at notes 15-48.

It is important to note that Angela Browne, a co-researcher on the Walker study, has published a significantly more credible book on violated women who kill their mates, *supra*, note 30, than Walker, primarily because Browne supports her statements with authority and does not give grandiose generalized statements which lack support. In particular, Walker's most recent book, *Terrifying Love*, *supra*, note 21, which deals specifically with violated women who kill their violators, has a dearth of scholarly authority to support her statements. Perhaps this is in part due to the targeted audience, presumably the general public, yet it does undermine her credibility as one of the foremost expert witnesses on women violated by their mates.

three recurring phases: the "tension-building" stage, during which there is a gradual escalation of friction and tension, with the violator expressing hostility and the violated woman attempting to placate her mate; an "acute battering incident" which is characterized by an uncontrollable discharge, through physical and verbal aggression, of the tensions built up during phase one; and a period of "loving contrition" following phase two, during which the violator apologizes for the violation, showing remorse and kindness — the woman is thus given positive reinforcement to remain in the relationship, hoping that her mate will actually change his/her behaviour. The cycle repeats itself, with the third phase diminishing as the violating behaviour in the relationship escalates.[49]

This type of relationship, according to Walker, breeds "learned helplessness" in the violated woman.[50] Because of the unpredictable nature of the violation and the lack of correlation between her conduct and her mate's aggressive and violative behaviour, the woman learns that the violation is inevitable; there is nothing she can do to prevent it.[51] Consequently, due to her inability to control the situation, she becomes fatalistic: she perceives her mate to be omnipotent and believes that she is powerless and helpless to escape the relationship.[52]

Walker's research on women violated by their mates has contributed significantly to society's increased awareness of the horrific condition of women who are violated by their mates. Proponents of the "battered woman syndrome" argue that it not only explains the psychological perceptions experienced by violated women in violent relationships but also helps to destroy the stereotypical myths associated with these women: that they are hysterical, masochistic, crazy, uneducated, that they come from minority and low-income groups, that they deserve to be violated, that they could leave if the violence was, in fact, bad.[53] Consequently, the concept is used to help society understand the perceptions of fear and violation from the violated woman's perspective and, in the legal context, to explain to a jury that the actions of the violated woman who killed her violator were "reasonable" given her situation.[54]

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49. Walker, *Syndrome*, *supra*, note 17 at 150; Browne, *supra*, note 30 at 107.

50. Walker adapted the theoretical concept of "learned helplessness" from Martin Seligman's laboratory experiments on animals (who were repeatedly and noncontingently shocked, and thus "learned" that it was impossible to escape from a painful situation, even when escape was possible): Walker, *Syndrome*, *ibid.* at 86.

51. "A battered woman therefore does not have to learn that she cannot escape one man's battering, but rather that she cannot escape men's overall coercion." *Supra*, note 34 at 48.

52. E. Pizzey, *Scream Quietly or the Neighbours will Hear* (Alison Forbes — ed.) (1974) at 39; Walker, *Syndrome*, *supra*, note 17 at 156; Browne, *supra*, note 30 at 124.

53. See, in general, *supra*, note 34 at 18-31; Education Wife Assault, *Wife Assault in Canada* (1985) at 2-3; *Lavallee* v. *R.*, [1990] S.C.R. 852 at 872-3, 76 C.R. (3d) 329 *per* Wilson, J. [hereinafter *Lavallee* cited to S.C.R.].

54. *Lavallee*, *ibid.* at 875-883. In the context of how the perspective of a woman, although not one violated by her mate, can be different, see *State* v. *Wanrow* 559 P. 2d 548 (1977):

> The respondent was entitled to have the jury consider her actions in the light of her own perceptions of the situation, including those perceptions which were the product of our nation's "long and unfortunate history of sex discrimination." *Ibid.* at 559.

However, to describe this conditioning (or socialization) as a "syndrome" undermines any attempt at countering the ideology which enables the perpetuation of the violation of women. By its definition, the term "syndrome" denotes "a group of signs and symptoms that collectively indicate or characterize a *disease*, psychological *disorder*, or other *abnormal condition*."[55] Consequently, by focusing on the psyche rather than on the misogynist environment in which the violated woman exists,[56] the characterization of this socialization as a "syndrome" enables the woman who is violated by her mate to be viewed as "abnormal," "irrational," and "alien."[57] Moreover, it belies the research involving women violated by their mates which demonstrates that these women, already conditioned by society to be passive, obedient, and subservient to men, are further conditioned – through terror and persistent physical, emotional and psychological violation at the hands of their mates – to believe that they are worthless, lack self-esteem, deserve the violation, have failed at being a "good wife," have no means of escaping the relationship, and are overly fearful.[58] This double conditioning is reinforced by the (lack of positive) response to the plight of violated women by family, friends, the church, the legal system including the police, and society in general.[59]

In short, to speak of the effect of this conditioning of the violated woman in terms of a "syndrome," which individualizes and medicalizes the issue, denies the political and

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55. W. Morris, ed., *The American Heritage Dictionary of the English Language* (1978) at 1305 [emphasis added].

56. The focus on the psyche leads "courts to refer to battered women defendants as though they suffered from some identifiable ailment with easily recognizable symptoms or behaviour patterns." Faigman, *supra*, note 38 at 644, citing, as an example, the court in *State* v. *Kelly* 97 N.J. 178, 478 A. 2d 364 (1984).

In fact, several commentators state that the "battered woman syndrome" should not be used in a claim of self-defence, but rather should be used in a defence of "temporary insanity." See, for example, R.D. Cipparone, "The Defense of Battered Women Who Kill" (1987) 135 U. Pa. L. Rev. 427 at 441.

57. Several commentators have criticized the "battered woman syndrome" for focusing solely on the psychological consequences on the violated woman.

Boisvert, *supra*, note 21 at 192 note 4 acknowledges that the expression has the risk of creating a stereotypical standard of the "battered woman," *ibid.* at 195; however, her criticism of the concept of the "battered woman syndrome" is weak, and takes place solely within the criminal law context. *Ibid.* at 212-214. See also, C. Littleton, "Women's Experience and the Problem of Transition: Perspectives of Male Battering on Women" [1989] U. Chi. Leg. Forum 23 at 35 & 37-38.

Moreover, Ewing, *supra*, note 21 at 56, despite his criticism that the "syndrome" could undermine the violated woman's contention that she acted reasonably when she killed her violator, still focuses on the psyche by advocating a theory of "psychological self-defence". For a good critique of Ewing's book, see D.L. Faigman, "Discerning Justice When Battered Women Kill" (1987) 39 Hastings L.J. 207.

58. For greater discussion of the effects of this conditioning, see, for example, E.A. Stanko, *Intimate Intrusions: Women's Experience of Male Violence* (1985) at 48-59; *supra*, note 33, at Chapter 5; Walker, *Syndrome*, *supra*, note 17; *supra*, note 34.

59. For greater discussion of the lack of response by various groups in society, see, for example, *supra*, note 4 at 5 *et seq*; *Preventing*, *supra*, note 10 at 78 *et seq*; L. Geraci, "Making Shelters Safe for Lesbians" in Lobel, *supra*, note 40 at 77-79; D.W. Currie, *The Abusive Husband: An Approach to Intervention* (1988) at 3 *et seq*.

collective collaboration involved in the socialization of women, and the collective consequences on women of this socialization.[60]

B. THE POLITICS OF THE VIOLATION OF WOMEN AND THE LAW

And when women do not need to live through their husbands and children, men will not fear the love and strength of women, nor need another's weakness to prove their own masculinity.[61]

It is trite to say that there must be a change in societal attitudes and behaviours in order to eradicate the oppression of women in society — the difficulty is in formulating strategies which will facilitate this transformation. However, any such strategy must be evaluated to determine whether its ideological disadvantages to the condition of women outweigh any practical benefits. By employing various components of Sartre's essay on antisemitism,[62] the following analysis of the underlying forces behind the oppression and stereotypical image of women provides an ideological tool with which to critically assess the legal system's theoretical and practical treatment of issues involving the violation of women by their mates.

Clearly acknowledged in our society is the ideology which characterizes the ideal male as powerful, aggressive, dominant, omnipotent, and the ideal female as weak, passive, obedient, submissive. The result: because members of both genders are valued primarily according to their proximity to the "ideal," they become conditioned to consider these characteristics as the norm of human behaviour. However, many individual men often feel impotent, powerless, and oppressed in the face of the public sphere where they interact in the employment, social, financial, political and other dimensions. Consequently, in an attempt to give value to their mediocrity in society (public sphere), these men create an "elite of the ordinary," aided by traditions of generations and the dominant patriarchal ideology:[63] in essence, by oppressing women and treating them as inferior beings — as "Other" — men can (re)affirm that they belong to the "elite."[64] This oppression may often take the form of violating their female mates as men desperately seek to prove that they do indeed represent (stereo)typical examples of what their social and gender roles demand and expect from them. It is vis-à-vis the mate, and through her alone, that a man often realizes he has rights and power in society.[65] In this way, men do not need to confront their fear of discovering that "the world is ill-contrived"; that it may be necessary for them to acknowledge that they are "master[s] of [their] own destinies, burdened with an agonizing and infinite responsibility," that they are indeed the

60. The "battered woman syndrome" "inevitably depoliticizes what is ultimately a social and political issue." Cormack, *supra*, note 21 at 8.

61. B. Friedan, *The Feminist Mystique* (1963) at 377-78.

62. *Supra*, note 15.

63. *Ibid.* at 23.

64. By analogy to Sartre's analysis of the Anti-Semite, this elite "closely resembles an aristocracy of birth. There is nothing [men] have to do to merit [their] superiority, and neither can [they] lose it. It is given once and for all. It is a *thing*." *Ibid.* at 27 [emphasis in original].

65. *Ibid.* at 28.

mediocre, isolated beings they refuse to recognize.[66] In being a member of an "elite," a man feels less isolated in society. In short, fear of the *human condition* may be a key factor for the misogyny exhibited by many men.[67]

There is no doubt that not all men will possess these traits; however, these "secondhand misogynists"[68] also participate in the survival and perpetuation of misogyny in society by passively condoning the negative image of women and supporting the social construct of women.

Women, too, play a role in the continuance of the misogynist condition of "woman." Because women in general have neither a community of interests or beliefs nor recognized history, the sole tie that binds them is often the "hostility and disdain of the societies which surround them."[69] However, the means of dealing with, or reacting to, their social construct and the hostile society divides them. The "authentic" woman has a "true and lucid consciousness of the situation"[70] and asserts her claim in the face of the degradation and violation thrust upon her. The "collaborator," on the other hand, deals with her situation by denying it or by running away; she acknowledges the images and characteristics endowed upon women by misogyny, and thus reacts accordingly in the face of other women.[71] Perhaps no moral blame[72] should be attached to collaborators, for they are merely attempting to cope with their social condition by disclaiming it. However, in so doing, they are unable to completely break free of the stereotypical image of women; they may be tolerated by men, but are never truly or fully accepted by them as complete beings.[73]

This form of collaboration is clearly demonstrated in the case of "lesbian battering." It is often thought that communities, or relationships, which solely involve women would reflect the stereotypes of the social construct of women — not only the "negative," such as passivity, obedience, silence, but, more importantly, the "positive," such as interconnectedness, nurturance, love.[74] If this were in fact the case, then there should be little, if any, violation of women by their lesbian mates. However, the contrary is true — the amount of violation within lesbian relationships approximates that in heterosexual relationships.[75] This reality should not be surprising: all women have been socialized to believe that they are inferior, and it is, therefore, easy, especially for a collaborator, to view her mate in a negative, inferior — in short, misogynist — light. Moreover, to justify her existence and make herself feel somewhat powerful and in control in the "private

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66. *Ibid.* at 40.
67. "The anti-Semite is a man who wishes to be pitiless stone, a furious torrent, a devastating thunderbolt — anything except a man." *Ibid.* at 54.
68. By analogy to many Anti-Semites, whom Sartre characterized as "secondhand Anti-semites." *Ibid.* at 52.
69. *Ibid.* at 91.
70. By analogy to the "authentic Jew." *Ibid.* at 90-91.
71. By analogy to the "inauthentic Jew." *Ibid.* at 92 *et seq.* See, also, *supra*, note 26.
72. Sartre, *ibid.* at 93.
73. *Ibid.* at 98-99.
74. For the "positive" characteristics of women, see, in general, C. Gilligan, *In a Different Voice* (1982).
75. See, in general, the articles in Lobel, *supra*, note 40; and "Lesbian Battery" (1990) 1:2 *Ms.* 48.

sphere" (at the same time being virtually a "non-person" in the "public sphere" due to both her gender and her sexual orientation), the lesbian may exhibit aggressive and violative behaviour towards her mate.

This analysis better enables a more complete appreciation of the condition of a violated woman who kills her mate. She has chosen "authenticity" which "manifests itself in revolt";[76] the moment she ceases to be passive, all power and virulence is taken from her violator.[77] She exhibits a strength of character which challenges her human condition. However, given the social construct of women, by acting in a powerful, aggressive, or "male" fashion (and thus in contradiction to the "norm"), she is viewed — not only by men but by many women as well, both within and without the legal system — as acting (or reacting) in an "irrational" (or, in legal jargon, an "unreasonable") way.

1. Where a Violated Women Kills Her Violator

> *[A violated woman] is held liable for having lived as a woman, and she is held responsible for having reacted, even if only once, as a man.*[78]

It must be stressed at the outset that, despite the serious ideological shortcomings associated with the concept of the "battered woman syndrome," given the gender inequality in society and within the legal system — and the lack of political will to eradicate the violation of women — no violated woman should be criticized for using any practical legal devices available to help her be acquitted for the killing of her tormentor in an attempt to break free from the cycle of violation, fear and degradation in which she lived. However, a device, such as the "battered woman syndrome," which may be advantageous to an individual violated woman, may have serious negative consequences from an ideological perspective for the class of violated women, and perhaps for all women.

One of the significant problems arising from the use of expert testimony on the "battered woman syndrome" is that such testimony further marginalizes and invalidates the voices and experiences of women who are violated by their mates. While expert testimony provides a practical advantage by contextualizing the experiences of the accused woman without requiring her to testify, the Supreme Court of Canada's decision in *Lavallee*[79] appears to require an expert's explanation of the condition of a violated woman in order for her perceptions and actions to be legitimated. Not only is control

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76. *Supra*, note 15 at 108.

77. *Ibid.* at 137.

78. P.L. Crocker, "The Meaning of Equality for Battered Women Who Kill Men in Self-Defense" (1985) Harv. Women's L. J. 121 at 150.

79. *Supra*, note 53. The facts, briefly, are as follows: Lyn Lavallee, a violated woman living in a violent relationship, killed her mate by shooting him in the back of the head as he left the room. Prior to the shooting, the deceased had physically abused Lavallee and had threatened that if she did not kill him, he would get her.

taken away from the woman but the emphasis on expert testimony impugns the integrity of the woman.[80]

Despite the positive response by feminists[81] to the decision in *Lavallee*, it is unclear whether the inclusion of expert testimony is actually required in all cases of this nature. For example, in 1983 in *Whynot*, the jury *acquitted* Jane Stafford of murder *without* any expert testimony on the "battered woman syndrome"; it was the Nova Scotia Court of Appeal which appeared unable to comprehend that the perceptions of a woman who has been persistently violated in a horrific and sadistic way might differ from those of the hypothetical "reasonable man." In fact, the Court emphatically stated that evidence of the history of the violation was "unnecessary," "served only to create sympathy" and should have been excluded.[82] However, the inclusion of such expert testimony seemed to have little effect on the jury's decision to render a manslaughter *conviction* in 1988 in *Chivers*,[83] despite the fact that the trial judge acknowledged that the violated woman, Judith Chivers, was "acting and reacting in the classic pattern of an extremely battered woman" on the night she killed her violative husband.[84]

More importantly, social science research has yet to determine the potential impact of expert testimony relating to the "battered woman syndrome" on jurors' evaluations of, and decisions on, the "reasonableness" of a violated woman's actions in killing her violator.[85] In fact, studies which have specifically examined the effect of this type of testimony have found, although the results are as yet far from conclusive, hints of negative stereotyping by the jurors: the violated women were viewed as being irrational and emotionally

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80. L. Luckhaus, "A Plea for PMT in the Criminal Law" in S. Edwards, ed., *Gender, Sex and the Law* (1985) at 159, 177.

81. See, for example, Boisvert, *supra*, note 21; and M. Eberts, "New Facts for Old: Observations on the Judicial Process" in R.F. Devlin, ed., *Canadian Perspectives on Legal Theory* (1991) at 467.

82. *R.* v. *Whynot (Stafford)* (1983) N.S.R. (2d) 33, 37 C.R. (3d) 198, 215 (C.A.). At her second trial, Jane Stafford pleaded guilty to manslaughter and received a sentence of six months' imprisonment and two years' probation. This plea had been offered at the first trial, but the Crown had refused to consent to it. D. Stuart, "Annotation" (1983) 37 C.R. (3d) 198-199.

For a very good description of the sadistic nature of the terrorism experienced by Jane Stafford, see B. Vallée, *Life with Billy* (1986) (with an introduction by Jane Stafford).

83. Although the judgment is unclear on this point, it would appear that the jury convicted her on the lesser charge of manslaughter (rather than second degree murder) due to her intoxicated state at the time of the shooting. *R.* v. *Chivers*, [1988] N.W.T.R. 134, 136 (T.D.) [hereinafter *Chivers* (No. 2)]. This decision focused on the issue of sentencing while the first decision, *infra*, note 84, concentrated on the issue of whether the defence of self-defence could be put before the jury.

84. *Chivers* (No. 2), *ibid.* at 142. The judge stated, however, that the evidence of her being a "virtual slave" (*R.* v. *Chivers*) [1988] N.W.T.R. 124, 132 (T.D.) [*Chivers* (No. 1)], living in isolation, and suffering years of physical and psychological violation and threats, did not justify her conduct. *Chivers* (No. 2), *ibid.* at 142.

85. Schuller, *supra*, note 21 at 121. Weighty questions remain unanswered: Does it perform its intended function? Are there any unintended effects? When and how should the testimony be presented? What form should the judge's instructions to the jury take? *Ibid.* at 126. See, also, E.M. Schneider, "Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering" (1986) 9 Women's Rts. L. Rep. 195.

damaged, and the jurors "were more likely to report that the accused was less in control over her actions than jurors not provided with expert testimony."[86]

This stereotyping of a violated woman, as helpless, passive and psychologically dysfunctional, will impart in the jurors' minds that the violated woman's state of mind at the time of the killing must have been impaired. Consequently, the jury, if it in fact acquits the violated woman, will appear to be *excusing* her actions, rather than indicating that she was *justified* in killing her violator. For feminists, the distinction between justification and excuse is critical. Excusable conduct characterizes a *wrongful* but pardonable act, connoting that the state of mind of the accused was in some way dysfunctional.[87] The support for excusable self-defence in the case of a violated woman killing her violator rests on the notion that it would not threaten "important values promoted by the criminal law, such as the suppression of private retaliation and the sanctity of human life."[88] Justifiable conduct, on the other hand, recognizes that the act is warranted and *legitimate* in the circumstances.[89] Justification, therefore, challenges the stereotypes and the socio-political attitudes which prevent lawyers, judges, jurors, and others from viewing the violated woman's acts as reasonable and correct in the circumstances;[90] in essence, it forces a radical re-evaluation and reconceptualization of a violated woman's actions[91] and a recognition of gender inequality in both the law and society.

Unfortunately, the Supreme Court of Canada in *Lavallee* did not capitalize on the opportunity to challenge and examine the underlying forces of women's oppression in society. The important questions of *why* women are allowed to be violated in our society and *how* this violation can be prevented remain unacknowledged and unanswered. In fact, there is very little progressive thinking in the judgment in respect of the issue of the violation of women in general or of the violation of women by their mates in particular — no more detailed analysis is forthcoming from the highest court of the land than such gender-neutral and empty statements as "[t]he gravity, indeed, the tragedy of domestic violence can hardly be overstated," and "[l]ong after society abandoned its formal approval of spousal abuse tolerance of it continued and continues in some circles to this day."[92]

By focusing on the psychological aspects of the individual woman, although her experiences have been contextualized as conforming to the socialization of women who

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86. Schuller, *ibid.* at 125.

87. "[T]he relevant question [in the case of excuse] is whether the particular actor can fairly be blamed for having succumbed to overwhelming pressure." C.J. Rosen, "The Excuse of Self-Defense: Correcting a Historical Accident on Behalf of Battered Women Who Kill" (1986) 36 Am. U. L. Rev. 11 at 23.

88. Rosen, *ibid.* at 17.

89. *Supra*, note 78 at 131.

90. Schneider, *supra*, note 85 at 215.

91. *Supra*, note 78 at 131, note 49.

92. *Lavallee*, *supra*, note 53 at 872.

have been violated by their mates,[93] the Court is scrutinizing the woman's actions — not the violation leading up to her final act, nor the human condition which has mediated her existence:

> Expert evidence on the psychological effect of battering on wives and common law partners must, it seems to me, be both relevant and necessary in the context of the present case. How can the mental state of the appellant [the violated woman] be appreciated without it? The average member of the public (or the jury) can be forgiven for asking: Why would a woman put up with this kind of treatment? Why should she continue to live with such a man? How could she love a partner who beat her to the point of requiring hospitalization? We would expect the woman to pack her bags and go. Where is her self-respect? Why does she not cut loose and make a new life for herself? Such is the reaction of the average person confronted with the so-called "battered wife syndrome." We need help to understand it and help is available from trained professionals."[94]

The Court's perspective is not surprising given its reliance on Walker's definition of "battered woman" and her concept of the "battered woman syndrome," which primarily emphasizes the psychological consequences of the violation on the women.[95] In effect, the socio-political forces underlying the violation appear to be disregarded.

Even the more progressive and political definition of Lesbian battering has a tendency to devalue certain types of violation, for "[p]hysical violence is not battering unless it results in the enhanced control of the batterer over the recipient."[96] In effect, the Court acknowledges this pernicious notion that some violation is to be tolerated or is acceptable; the Court states that once expert testimony has been introduced to contextualize the perceptions of the violated woman at the time of the killing, it is then up to the jury to decide whether the distinction drawn between "typical" violence and the particular events the accused perceived as "life threatening" is sufficiently compelling to warrant an acquittal.[97] But, surely, no degree of violation should be deemed "typical" and thus acceptable! Moreover, this reasoning ignores the reality that the violation of women by their mates is "murder by installment,"[98] although Madam Justice Wilson did allude to it.[99]

In essence, the use of expert testimony on the "battered woman syndrome" in a murder trial accentuates — and perpetuates — the "passive" aspects of the violated woman's

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93. The Court did acknowledge that, given the relational context in which the violation occurred, the cumulative effect of months or years of brutality must be considered for the jury to better appreciate the perspective of the violated woman who has killed her violator, in order to determine whether the accused woman had a "reasonable" apprehension of death when she acted. *Ibid.* at 882 [quotation marks in original].

94. *Ibid.* at 871-72.

95. See, in general, *ibid.* at 878-82 & 887-88. Wilson, J. also discusses Ewing's notion of "psychological self-defence" of a violated woman who kills her mate, *supra*, note 21. *Lavallee*, *ibid.* at 886-87.

96. Hart, in Lobel, *supra*, note 40 at 173.

97. *Lavallee*, *supra*, note 53 at 882 [quotation marks in original].

98. See discussion in *supra*, note 17.

99. *Lavallee*, *supra*, note 53 at 883, citing *State* v. *Gallegos* 104 N.M. 247, 719 P. 2d 1268 (Ct. App. 1986).

experience which focus on the woman as victim,[100] a fact which renders the concept incongruous and potentially prejudicial in respect of justifying the actual "active" response of the violated woman who kills her violator. Consequently, she is often viewed as acting in an atypical, abnormal manner, both as a woman, and especially as a violated woman: her authenticity as a woman is marginalized, if acknowledged at all.

2. Where a Violator is Charged with Assault

> *Wife assault rarely stops without some sort of outside intervention with the man. Women who decide to stay with, or return to, their partner remain at risk unless their partners receive effective intervention.*[101]

It is distressing to note that the only time that the violation of women by their mates is seriously discussed in the courts is the rare — and extreme — case where a violated woman kills her mate. In cases where the violated woman has charged her mate with assault, evidence on the consequences of the violation on the woman is not put forward with any regularity to demonstrate either the endemic nature of the violation of women or the seriousness of the effects of the violation on the woman.[102] Moreover, the courts remain mute regarding the societal attitudes and behaviours, as well as the socialization of both men and women, which underlie the violation of women. Implicit in this muteness is the perspective of society — misogynists and collaborators alike — which blames the violated woman for not leaving a violative relationship without acknowledging that there are few resources — financial, political, legal, social — which would enable her to leave. Instead of attempting to comprehend the situation and the "learned helplessness" of a violated woman (and the focus on day-to-day survival which results), society blames her for reflecting the stereotypical image of passivity by staying in a violative relationship.[103] It ignores her authenticity as a survivor who remains in such a relationship as a result of the socio-economic conditions of women and the feminization of poverty: she would rather face violation from her mates than see her children go without food and proper shelter.

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100. See, for example, Schneider, *supra*, note 85 at 198-99.

101. Currie, *supra*, note 59 at 1.

102. An exception is *R.* v. *Petrovic* (1984) 47 O.R. 97, 41 C.R. (3d) 275 (C.A.), cited to O.R., where the Court acknowledged that sufficient weight must be given "to the necessity of general deterrence in cases involving callous and repeated acts of violence against a vulnerable victim belonging to a class (women violated by their mates) requiring this Court's protection." *Ibid.* at 111.

103. For an examination of the stereotypical myths characterizing violated women, see, for example, *supra*, note 34 at 18-31.

In a random sampling of recent assault cases in this area,[104] the courts generally focus on the physical damage of an individual instance of violation without relating the effect of the repetitive nature of the violation on the woman, despite the fact that several cases involved an assault on the woman while the accused was on probation for a previous assault conviction for violating his mate![105] In a particularly shocking case, the accused, a police officer, was given a one-day sentence for punching his wife in the face, pounding her head on the floor, and then knocking her unconscious with a police choke hold that cuts off the blood supply to the brain — mitigating factors included the lack of criminal record and his wife's "relatively minor" injuries![106]

Moreover, several of the cases focused particular attention on alcohol abuse as being a fundamental cause in the assault,[107] despite the fact that researchers have found that, "[a]lthough a strong association has been found between substance abuse and the occurrence of violence in marital relationships, it should be viewed as a *disinhibiting, but not a causal, factor*."[108]

The light sentences imposed, and the focus on a specific assault incident, appear somewhat ironic in light of the courts' lip service to the notion that "spousal abuse" and "wife abuse" are no longer tolerated in our society,[109] and their acknowledgement that the violation by a mate is rarely an isolated event,[110] often culminating in the woman's

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104. Even though the following comments in the text are based on this random sampling, I believe that a proper empirical study would not achieve significantly different results, given the tendency of many (male) judges "to adhere to traditional values and beliefs about the natures of men and women and their proper roles in society." B. Wilson, "Will Women Judges Really Make a Difference?" (The Fourth Annual Barbara Betcherman Memorial Lecture, Osgoode Hall Law School, 8 February 1990) 8 (citing research done by Norma Wikler at the University of California). See, also, *supra*, note 5 at 22-27, and M.J. Mossman, "Feminism and Legal Method: The Difference It Makes" (1986) 3 Australian J. L. & Soc'y 30.

105. See, for example, *R.* v. *Julian*, [1990] B.C.J. No. 2775 (C.A.).

106. "Wife-beater jailed for 1 day" *Windsor Star* (21 September 1991) A8.

107. See, for example, *R.* v. *Inwood* (1989), 69 C.R. (3d) 181, 32 O.A.C. 287 [hereinafter *Inwood* cited to C.R.]; *R.* v. *Julyan*, [1990] O.J. No. 85 (D.C.); *R.* v. *Allukpik*, [1987] N.W.T.R. 139; *R.* v. *Kellypalik*, [1990] N.W.T.J. No. 33 (S.C.).

108. Browne, *supra*, note 30 at 73 and references cited therein [emphasis added].

109. The term "lip service" has been used since, despite such sanctimonious language as the following, the sentences do not reflect the courts' purported outrage at the violation of women. For example:

> "Parliament have [sic] set a maximum for wife beating of 10 years. In my opinion this court cannot avoid considering the maximum in assessing whether the sentence was a fit and proper one. In a serious case of wife beating such as this a substantial sentence should be imposed." — sentence of 18 months upheld by Court of Appeal, although Nemetz C.J.B.C. did acknowledge that the sentence was on the low side, given the circumstances: *R.* v. *Getson* [1987] Y.J. No. 13, 1 (Y.C.A.) [assault causing bodily harm].
>
> "If...the court imposed lenient sentences for cases of spousal assault, the people in the community might get the wrong message, that it is "okay" for a person to assault his wife. It is for these reasons I am of the view that in Mr. Kellypalik's case, a period of incarceration is necessary." — sentence of three months and twelve months' probation [first offence]: *Kellypalik*, *supra*, note 107 at 4-5.

110. See, for example, *Getson*, *ibid.* at 6.

death.[111] However, this focus appears less contradictory when examined in light of the definition of "battering."[112] For example, in *Inwood*, the court stated that the case did not involve a "battered wife" because it was the first time Inwood had assaulted his wife; the court did, however, acknowledge that it "might in time have developed into one if the relationship between Inwood and Sidorova [his wife] had not terminated."[113]

Perhaps this apparent contradiction is also the result of reality-based cynicism on the part of the judiciary, for at least one judge has acknowledged that a prison term will not deter a person from violating his or her mate.[114] Many front-line workers would agree; in fact, these workers state that, without therapy, there is little likelihood of any modification in the violator's behaviour and the violation will continue and possibly escalate.[115]

(a) Therapy Programs for Violative Mates

The recent Parliamentary report, *War Against Women*, recommended that prosecutors urge the court to sentence the violative mate to mandatory counselling and treatment. In fact, this type of order could increase the amount of control the woman has over the relationship for many violated women do not want their mate to be imprisoned — they just want the violation to stop; counselling may provide at least a partial answer to their desire.[116] Unfortunately, there has only been minimal evaluation of the effectiveness

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111. "...I don't known [sic] what the answers are to spousal assault. I don't think anybody does, but I know what will eventually happen. If you live with this lady again and for any length of time and you drink, you'll kill her." *Supra*, note 105 at 5. This was a case involving assault causing bodily harm; accused had four prior convictions for assaulting his wife; the assault at issue in this case occurred while he was on probation for one of the previous convictions.

112. See discussion in text accompanying notes 92-99, *supra*.

113. *Inwood*, *supra*, note 107 at 192. It should be noted that the reasoning in *Petrovic*, *supra*, note 102, — that special consideration of persistent and prolonged assaults may be required in determining the appropriate punishment — was distinguished in *Inwood* because the assault was considered an isolated event.

114. *R.* v. *Allukpik*, *supra*, note 107 at 141.

115. These commentators argue that the further development of therapy programs for violative mates could potentially be an important long-term strategy for curtailing the violation of women by their mates. See, in general, Ontario Medical Association Committee on Wife Assault, *Wife Assault: A Medical Perspective* (1988) at 14 [hereinafter *OMA Report*]; MacLeod, *Preventing*, *supra*, note 10, 93 *et seq*; D. Adams, "Identifying the Assaultive Husband in Court: You Be the Judge" (1989) 33:4 Boston B. J. 23 at 25; and Currie, *supra*, note 59.

These programs must be developed in such a way as to reflect the specific needs and issues of violators based on culture, race, sexual orientation, etc; however, most current commentary on these programs focuses on heterosexual relationships. See, in general, all the sources listed, *ibid.*

116. *Supra*, note 5 at 35. In one Canadian study, 81% of shelter workers were of the opinion that more violated women would consider having the police lay charges if they knew the violative mate would be ordered to get special treatment. MacLeod, *Preventing*, *ibid.* at 95.

To ensure that these programs are able to operate effectively, at least from an administrative point of view, not only must adequate government funding be provided but lawyers and judges must be made aware of the existing resources and programs. *OMA Report*, *ibid.* at 35. It should be noted that some commentators fear that funding for more programs for the violator will come at the expense of funding for the violated woman. MacLeod, *Preventing*, *ibid.* at 98.

of the existing counselling programs for violators.[117] Moreover, of the random sample of the Canadian assault cases examined, only two[118] included a probationary order for counselling (completion of an anger management program).[119] Several decisions focused on the effects of drugs and alcohol in relation to violative behaviour;[120] however, it is insufficient to merely order the accused into a drug or alcohol treatment program, since rehabilitation from substance abuse will not stop the violator's abusive behaviour.[121]

Considerable reliance should not, however, be placed on any counselling programs for violative mates. Although several commentators urge that these programs be established within a framework recognizing that the violation is not merely a psychological problem but rather a socio-political issue,[122] the fundamental connotation will remain that the violator will be considered an aberrant individual, unable to control his/her emotions. Moreover, U.S. studies indicate that approximately 50% of violators who voluntarily seek counselling — usually where the woman threatens to leave — use the program as a tool to get their mate back,[123] but drop out of the program within the first month.[124] Much more frightening, however, is the observation that these programs may be "subtly perpetuating" the violation of women by their mates by "easing the violator's feelings of guilt" and even helping them "express this violence in more socially acceptable ways," such as subtle forms of verbal, economic, and psychological abuse.[125]

Violative mates must "unlearn their overbearing sense of rigidity, domination and control that they associate with manhood."[126] Yet, outside the counselling program, the violator's view of power and control over women is constantly reinforced by societal attitudes, and reflected in media, pop culture, theology, and other social and governmental institutions, which perpetuate and promote the subordination and violation of women — it is this reality which provides perhaps the greatest limitation to the effectiveness of these programs. As long as the violation of women is condoned by the misogynist and

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117. MacLeod, *Preventing*, *ibid.* at 97; *OMA Report*, *supra*, note 115 at 14. In fact, the Government's *Response* to the recent Report on the *War Against Women* indicated that research on treatment programs demonstrates that the programs have a "viable but limited role in the more complex matter of dealing with abusive men in our society." The *Response*, citing a Department of Justice study, concluded that more research is necessary on the subject: *Response*, *supra*, note 8 at 19. See, also, Canada, Department of Justice, *Treatment Programs for Men Who Batter: A Review of the Evidence of Their Success* (1991).

118. *R.* v. *Hansell* [1989] M.J. No. 666 (P.C.); *Inwood*, *supra*, note 107. In one U.S. study, less than 1% of violators were referred to specialized counselling programs. Adams, *supra*, note 115 at 25.

119. In fact, emphasis on the psychological aspect, such as anger control, serves to blame the victim for the violator's behaviour. Currie, *supra*, note 59 at 3 & 5.

120. See discussion in text accompanying notes 107-108, *supra*.

121. Adams, *supra* note 115, 25.

122. See *supra*, note 5 at 33; and *OMA Report*, *supra*, note 115 at 13-14. Moreover, these programs should be coordinated with programs for violated women. See, for example, MacLeod, *Preventing*, *supra*, note 10 at 98, and Currie, *supra*, note 59 at 2.

123. MacLeod, *Preventing*, *ibid.* at 96, and Currie, *ibid.* at 9.

124. Adams, *supra* note 115 at 25. Many of these individuals view the problem in terms of the woman leaving the relationship and not in terms of their violative behaviour. *Ibid.* at 25.

125. MacLeod, *Preventing*, *supra*, note 10 at 97-98.

126. E.E. Gondolf, *Men Who Batter: An Integrated Approach to Stopping Wife Abuse* (1985) at 86.

collaborative society — and physical, psychological, economic and emotional violation continues to be recognized as an instrument to force women to be submissive to the will of their mates — it will be extremely difficult to reduce the violation of women by their mates, by merely establishing therapy programs for violative mates.

These significant limitations indicate that therapy programs may, at best, provide only a partial solution to the eradication of the violation of women by their mates. However, like the use of expert testimony of the "battered woman syndrome" to help acquit a violated woman who killed her violative mate, these programs do provide short-term support mechanisms to help individual women deal with their horrific condition. Moreover, they provide a vehicle which emphasizes that the violation of women is male problem as well and that men must alter their misogynist attitudes and behaviours.

II. CONCLUSION

As a patriarchal society, we are socialized, conditioned, and taught that women are weak, passive and inferior, which leads to the acceptability of the oppression of women. Men, on the other hand, are considered powerful, superior and in control of women. One way to ensure that men retain power and control over women is by the use of violence. Consequently, the view that the violation of women is caused by idiosyncrasies in individuals, psychological and behavioral dysfunction of individuals, or the more Freudian notions of sex dysfunctions, must be rejected. This is not to say that some individuals who violate women do not suffer psychological and behavioral disorders; however, a focus on the particular characteristics of an individual ignores the layers of women's oppression throughout society. It is too easy (and convenient) to argue that an individual's behavioral patterns have caused the person to react in a violent way to women; with this type of argument, it is unnecessary to critically examine and modify the misogynist attitudes and patriarchal institutions of society; unnecessary to acknowledge complicity in the collective violation of women; unnecessary for society, individuals, and governmental institutions to proactively work towards eradicating the subrogation and oppression of women.

In particular, the legal system has never provided for women a safe haven from violation, nor has it enabled women to be free from oppression. In fact, the law, reflecting societal and theological mores, has perpetuated women's subordination to men — in particular within the private sphere.[127] While many of the legal shackles on women have been removed — the wife no longer takes her husband's domicile,[128] is no longer deemed to be her husband's property,[129] and no longer is subjected to the husband's legal physical discipline[130] — women continue to be violated. The law's disregard for,

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127. For historical analyses of women's oppression, see, for example, C. Backhouse, *Petticoats & Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991); Hilton, *supra*, note 21; Martin, *supra*, note 33; A. Jones, *Women Who Kill* (1980).

128. J.G. Castel, *Introduction to Conflict of Laws* (2d) (1986) at 29.

129. See, for example, the recent amendment abolishing the exemption of marital rape. *Criminal Code* R.S.C. 1985 c. C-46, s. 278.

130. See, for example, Olsen, *supra*, note 20 at 1510 note 54.

and lack of response to, women's violation mirror those of society; in fact, many violated women speak of being subjected to further psychological and emotional violation when they have sought help from the police[131] or various social agencies.[132]

Within the court system, the woman violated by her mate is often characterized as either deserving the physical assault[133] or secretly enjoying it.[134] In addition to these considerable problems with the judicial system, there are other significant difficulties that prevent the legal system from satisfactorily preventing the violation of women: many violated women, given the collective socialization of women, are not going to press charges against their mates;[135] society has yet to find the collective resolve to modify behaviour and attitudes towards women; not all abusive mates will be responsive to counselling;[136] judges need training in gender-bias;[137] police need better education in dealing with the violation of women by their mates.[138]

There are no simple solutions to achieve the goal of eradicating the violation of women. Substantive means must be established in order to meet the goal and prevent it from becoming a mere ideal. Education programs are important but may only affect a variety of individuals rather than society as a whole. Legal statements and partial band-aid solutions, such as the admissibility of expert testimony on the "battered woman syndrome," as demonstrated above, are ineffective and often counterproductive in modifying societal behaviours to improve the condition of women — the law remains a powerful instrument for the hegemony of the state.

Over a decade has passed since Jane Stafford's trial and the overturning of her acquittal[139] acted as a catalyst to publicize the human condition of battered women (a very new term — but a very common and old problem — at the time of Jane's trial). Her case paved the way for the recent Supreme Court of Canada decision in *Lavallee* sanctioning the admissibility of expert testimony on the "battered woman syndrome" to help contextualize the circumstances surrounding the act of the battered woman killing her violative mate. The one positive practical effect of the inclusion of such testimony is that

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131. "If I report him, he'll come after me to kill me, but the police won't help. I have a friend who asked them to have a car posted in front of her house, but they just smiled and said. 'All you've got is a verbal threat — we can't babysit you'." The voice of a violated woman quoted in MacLeod, *Preventing*, *supra*, note 10 at 88.

132. For lesbians, this is even a greater violation — especially when they are confronted with homophobia in shelters for violated women. See, for example, L. Geraci, "Making Shelters Safe For Lesbians" in Lobel, *supra*, note 40 at 77-79.

133. In the very public and sensationalized Kirby Inwood trial in Toronto in 1984, where Inwood was charged with assaulting his Russian wife, his defence attorney, Edward Greenspan, viciously cross-examined the wife, implying by his barrage of questions that she deserved what she got.

134. *Lavallee*, *supra*, note 53 at 872-73 *per* Wilson, J. See also, *supra*, note 34 at 18-31 where Walker discusses some of the stereotypical myths associated with violated women.

135. MacLeod, *Preventing*, *supra* note 10 at 79-81; *R.* v. *Hansell*, *supra*, note 118 at 7, where wife, in a victim impact statement, did not want the court to impose a jail term.

136. Adams, *supra*, note 115 at 25.

137. *Parliamentary Report*, *supra*, note 5 at 22-27; Wilson, *supra*, note 104.

138. *Parliamentary Report*, *ibid.* at 38-39.

139. See text accompanying notes 81-82, *supra*, for discussion of her case (*Whynot*).

it may be successfully applied to acquit a violated woman accused of killing her violator, as evidenced by the recent acquittal of a violated woman in Alberta.[140]

However, society has not progressed in eradicating violence against women during this time. In March, 1992, Jane Stafford (now Hurshman) died; her death being viewed by the RCMP as an elaborate scheme to have her suicide look like murder.[141]

Perhaps it will never be known with certainty who actually pulled the trigger which killed Jane. She had been crusading for battered women in her community over the past few years; recently, she had been receiving death threats — most likely a result of the societal backlash against feminist pursuits and against women who are struggling for an amelioration of the human condition of women.[142] One certainty: society collaborated in her death; no one can plead innocence.

Society continues to condone the socialization which perpetuates violence against women, yet ignores the further socialization of women who are violated by their mates. In short, by focusing on the psychological aspects of an individual violated woman who kills her abusive mate, society can blame the woman for acting in a "nonwomanly" way when, responding to a fundamental threat to her life (or to the life of her children or other family or friends), she acts in a strong and aggressive fashion by killing her mate;[143] society can thus avoid the self-analysis which would no doubt force its members to acknowledge their burden of an infinite responsibility for the human condition of all persons in society.

Until such time as society has eradicated the social constructs of women as passive, weak, subordinate, and men as dominant, aggressive, no one can be completely free. As long as women are violated, as long as they are "other," are nonpersons in a society whose hegemony condones and perpetuates violence against women, no one can wash his hands of the consequences resulting from such violation.

This paper offers no insightful ways of eradicating the violation of women. It is hoped that, despite the current backlash against feminist objectives and against the political correct movement, more women will acknowledge their "authenticity," refuse to

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140. *R.* v. *Heavenfire*, as reported by M. Zurowski, "Heavenfire not guilty of murder: 'Battered wife' set free" *The Calgary Herald* (25 June 1991) A1. The violated woman had been repeatedly beaten by her common-law mate throughout their three-year relationship. On the night that he was killed, he had given her two black eyes, and, during an argument, had "handed her a gun and dared her to shoot him if she really hated him"; she then "accidentally shot" him. *Ibid.*

141. According to the RCMP, she had a reputation of disguising the truth — for example, the conflicting stories she had given the authorities following the death of her abusive mate, Billy (she had told the authorities that her son had killed Billy; later she stated she had killed him while he was passed out in their truck). *Sunday Morning*, CBC Radio, 22 March 1992.

142. For an excellent discussion on the current backlash against women and feminism, see Faludi, *supra*, note 1.

143. Oftentimes, the violated woman does not intend to *kill* her mate; she just wants the violation to end. See, for example, Vallée, *supra*, note 82; and the various biographies discussed in Walker, *Terrifying*, *supra*, note 21.

collaborate, cease to run away from their degradation and oppression, and thus revolt in positive ways to help forge modifications in their social condition.

Men must acknowledge that the violation of women is *their* problem as well; that they are cocooned in, and must break free from, their own socialization and conditioning of what a "real man" is. One positive step in this direction is the recent forming of the group "Men Walking Against Violence Against Women" in Ontario. This group calls upon men to break the silence and complicity of male violence; it calls upon men, individually and collectively, at the community and national levels, to take responsibility for standing against the crimes men commit.[144]

In the interim, no one can criticize a violated woman for reacting to her horrific human condition by killing her violative mate. She is rebelling against her symbolic murder; fighting to stay alive and to not become a statistic of femicide. These women should be praised for their courage and strength, not accused (and often convicted) of a criminal offence, when the violation forced on them is rarely condemned sufficiently by either the legal system or society in general. It should be acknowledged, however, that the choice of authenticity in relation to the violated woman who kills her mate does not provide a solution to the societal problem of the violation of women. It is, at best, an individual solution — one that can have serious negative consequences for the violated woman because it is not generally viewed as a viable solution by society at large. However, it is a solution which should not be denied to violated women who, in an attempt to (re)gain some form of control over, and dignity in, their lives, break the shackles of oppression by the only means they believe they have in an oppressive and misogynist society.

144. "Support Men Walking Against Male Violence," information flyer from Men Walking Against Male Violence (not dated but published probably in 1991).