

Thinking differently in order to see accurately

Explaining why we are convicting women
we might otherwise be burying

A “bad relationship with incidents of violence”

- A dysfunctional relationship - both are responsible for this.
- One partner (sometimes both) has engaged in acts of physical violence.
- In between acts of violence the victim is not being abused.

The victim:

- has safety options - leaving, getting a protection order and calling the police.
- is free to exercise these safety options when not being abused.
- has chosen not to seek safety but instead to tolerate the abuse because of love.



Section 248, Western Australian Criminal Code

“A person’s harmful act is done in self-defence if;

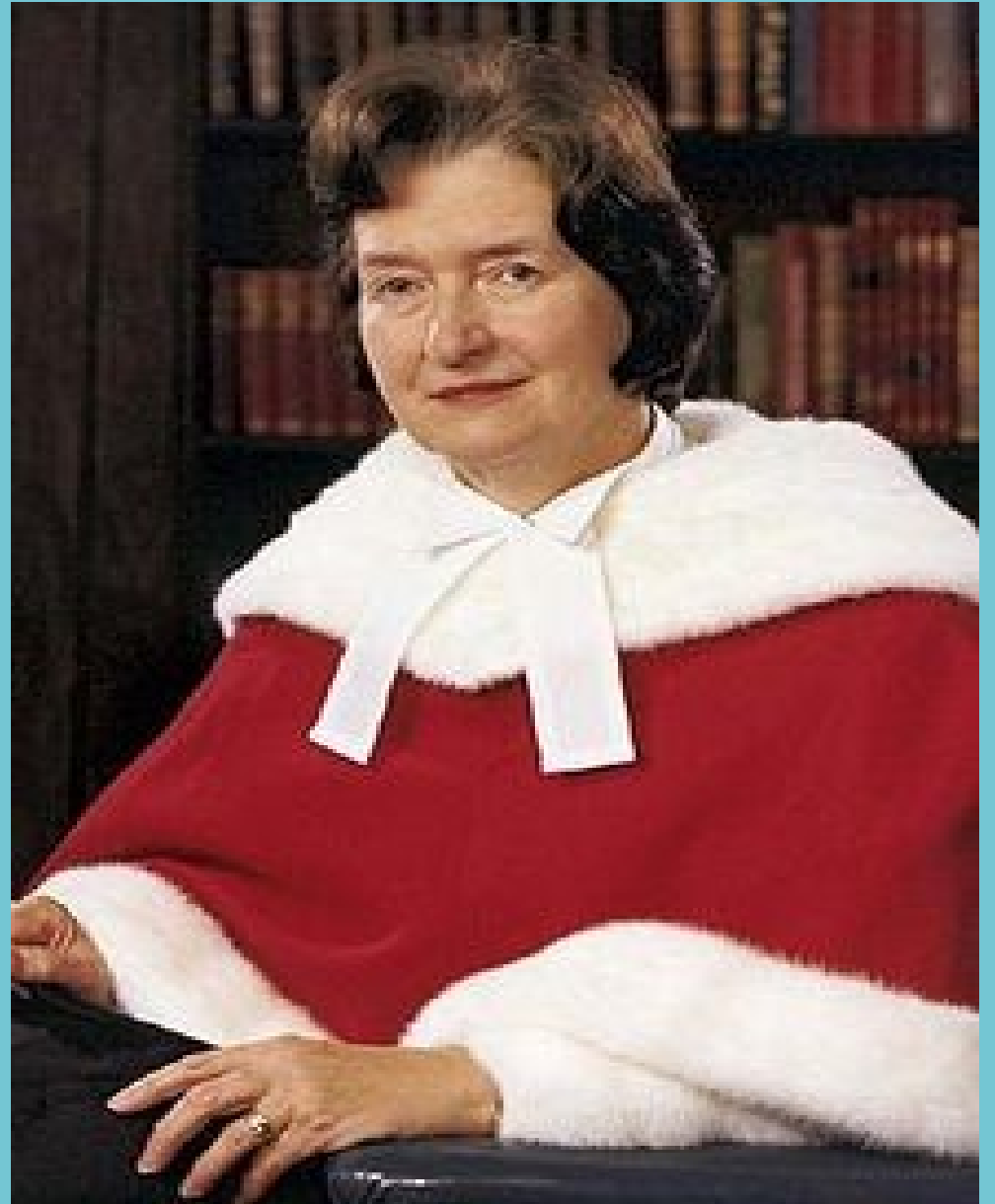
- (a) the person believes the act is necessary to defend the person or another person from a harmful act, including a harmful act that is not imminent; and
- (b) the person’s harmful act is a reasonable response by the person in the circumstances as the person believes them to be; and
- (c) there are reasonable grounds for the beliefs.”

The two factual issues are:

- What was the nature of the threat that she faced?
- What were the means she had to deal with it?

R v Lavallee

Requiring women to wait until they are under attack before they can defend themselves is tantamount to sentencing abused women to “murder by instalment.”

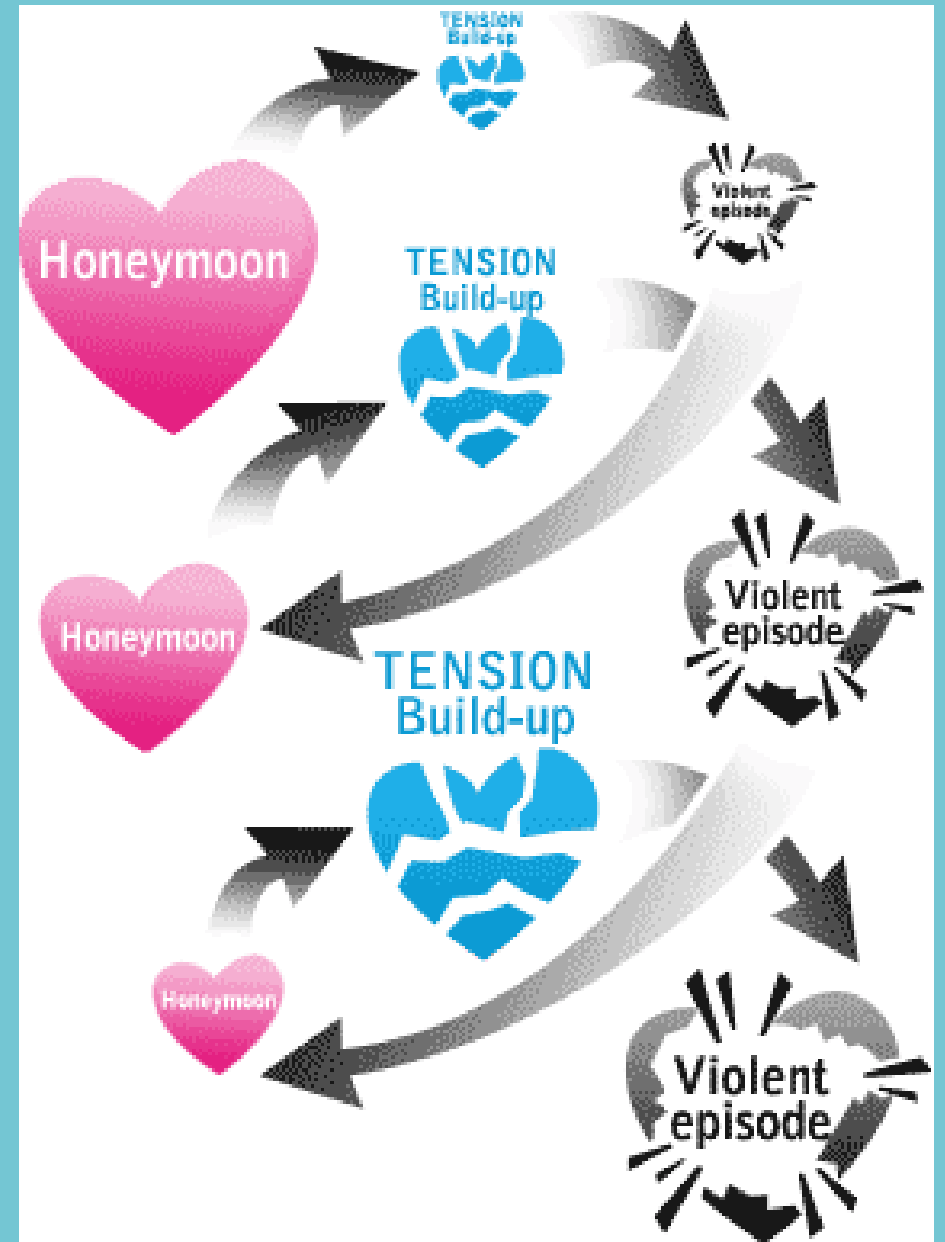


Battered woman syndrome

- The violence occurs in a “cycle.”
- Trauma causes the victim to “bond” with the predominant aggressor so she is unable to leave him despite the abuse.

The abuse caused her to “lose the ability to do logical things like leave.”

She “gradually ... lost her good sense in relation to making judgments about that relationship.”



Western Australia v Liyanage: The prosecution

- The marriage between Chamari and Dinendra was “unhappy”.
- There were some acts of violence by Dinendra but there had not been any physical violence for several weeks prior to the killing because he was “getting his own way”. This meant “the physical levels of violence weren’t escalating at all”.
- If Chamari was afraid of Dinendra she could have left him or called the police.
- She chose to stay with him because she loved him.
- She killed him because he was going to leave her to “pursue a relationship” with a 17 year old.

Chamari: “sexual torture”

“it is one of the most unpleasant things in my life because I did not wanted to look at people having sex with children ... I don’t have any interest in sex anymore, when I hear ... girls crying and screaming.”

“I really couldn’t actively participate in sexual acts. So he would get very angry and very very abusive. He would be very powerful and forceful and its gets really really painful...”

“he would punish me by having anal sex, and it was very painful and I really, really hate that”

“It became kind of a nightmare ... I just did whatever he wanted to do... Because I just wanted to get it done and over with.”

The Prosecution

- She “engaged” in “sexual practices” that were “unusual” and which “she did not like”. She “went along” because she “wanted to keep her marriage together.”
- Dinendra “clearly had sexual interests that ran contrary to her values. But she was prepared to put up with ... those actions, because of this bonding.”
- “sexual intercourse occurred and Dr Liyanage wasn’t happy about that or hadn’t – may not have consented.”

Expert psychiatrist

- “sexual behaviour” that Chamari found “unpalatable” and “so distressing”
- “increasingly unconventional and impersonal sexual behaviours”
- “compliance” by Chamari with “all manner of acts”

Trial judge

- Made her “have sex against her will”

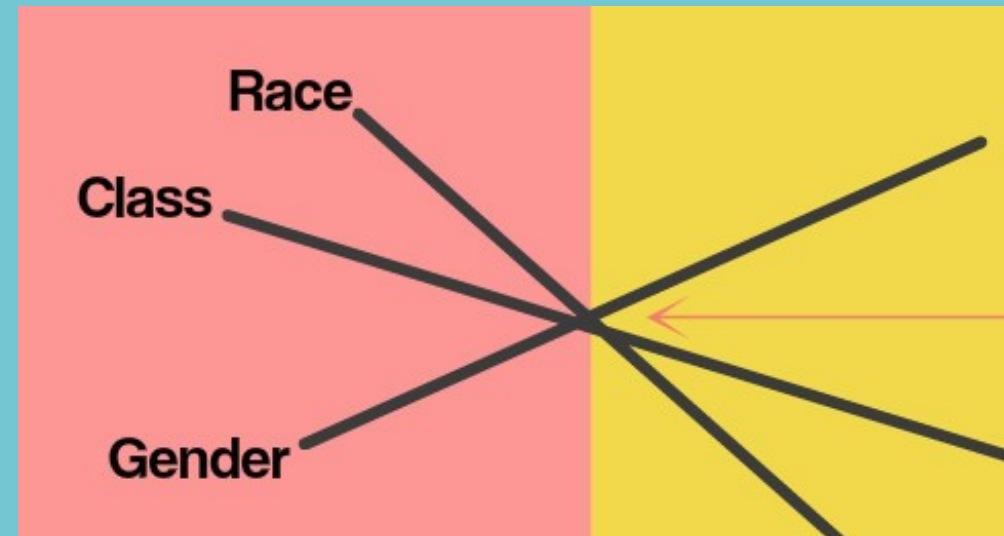
Court of Appeal

- “The deceased forced the appellant to watch child pornography, sometimes while having sex with him.”
- “sexual activity on skype”

NZ FVDRC: IPV as “social entrapment”

This requires an understanding of:

1. the social isolation, fear and coercion his behaviour creates for the victim;
2. the limitations of the systemic safety response to IPV; and
3. how structural inequities associated with gender, class, race, disability and other intersectionalities exacerbate these other two dimensions of entrapment.



Stark: Coercive control

IPV is an attack on the victim's "personhood":

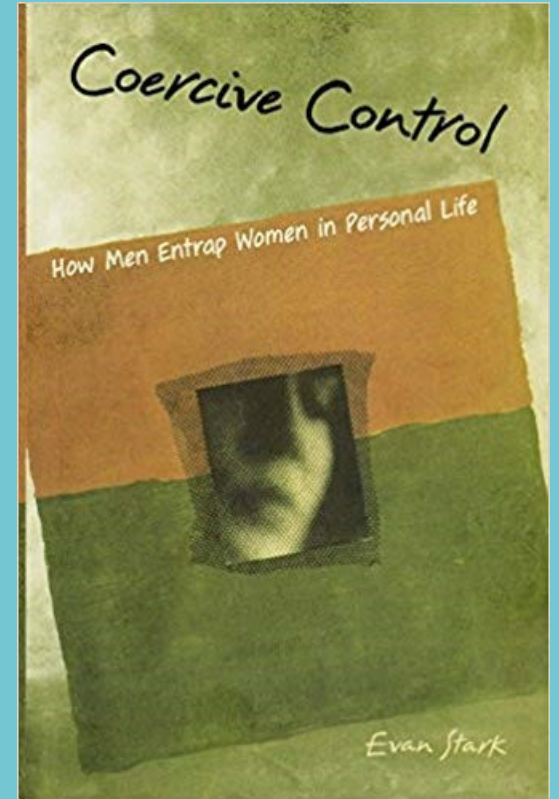
"When he is ready to eat, it's ready.

When he wants to go out, I'm ready.

When he wants to watch movies, I'm doing.

When he talks, I'm listening. I minimise expressing my feelings and be a listener to him."

(Western Australia v Liyanage)



Stark: Coercive control

- **Abuse strategies** are developed by trial and error over time for her by the person who knows her most intimately.

- **Strategic and retaliatory:**

The *threat* is bound up with the victim's *options for responding* to it because it is designed to close down those options.

Acknowledging the victim's resistance exposes the nature and extent of the violence and gives her some dignity.

- **Utilise the norms of heterosexual sexual intimacy.**

Chamari's acts of resistance

- fighting back until physically subdued
- refusing to have sex with other men
- disobeying Dinendra's instructions to talk to a client on the way home
- refusing to invite vulnerable women/girls into relationship with them
- privately warning K, a 17 year old, that she could not protect her
- asking to be rostered on evening shifts to avoid Dinendra's internet activities
- delaying booking study leave by pretending she had been too busy (Dinendra wanted to take K on a holiday with them to have "sex")

The experts on Chamari

- "pleasant, eager to please"
- "overprotected and over sheltered"
- Chamari had "dependency needs"/ Dinendra had "dominance needs"
- A preexisting tendency to "submit to the direction and advice and control of a dominant male"
- A "submissiveness and tendency to comply and placate a dominant male figure"
- Developed "cult like thinking"

The prosecution

“The problem was you did love him, wasn’t it?”

“You did still love him at the time didn’t you?”

“You did still love Dinendra at the time didn’t you?”

“And so you loved him, and you went to Kununurra?”

“And loved him at the same time. That’s why you went, isn’t it?”

“And you still loved him?”



Evan Stark – Coercive control

- **Tactics of control**

- Isolation
- Deprivation, exploitation, microregulation

- **Tactics of coercion**

- Violence
- Intimidation: Threats, surveillance and degradation

Isolation

- Persuaded her to have sex – so she was unavailable for arranged marriage to another
- Loyalty tests – insisted she drop friends who warned her about him
- Dominated her time – she had no time for relationships with others
- Threatened her family – she distanced herself from her family to protect them
- Invited her to immigrate to Australia – where she knew no one but him
- Refused to allow her to socialize without him
- Degraded her so that she was too ashamed to disclose what was happening

Deprivation, exploitation, micro-regulation

Dinendra determined:

- what she spent her money on and how much;
- when she slept;
- when she rang in sick for work; her career directions;
- what she cooked; what she ate (monitoring her weight so she was “good for skyping”);
- who she socialised with; what she thought;
- whether she wore jewellery;
- whether she was in on contraception and what kind....

“He gets angry about the way I cook, the way I walk, talk to other people, the way I do things, way I study, way I plan things. I didn’t know what to do, how to behave.”

Tactics of coercion: Violence

- Forcing her to be a “swap” for pornography he wanted
- Forcing her to assist him in “grooming” teenagers and vulnerable young women
- Because she was “not learning” to do as he required
- Hitting her; hitting her head on the wall
- Driving at excessive speeds - whilst threatening to have a car accident and hitting her
- Using a rolling pin; wooden spoons, plates, chairs, boots, a catapult that threw tiny metal balls
- Vaginal and anal rape (whilst tied up; on camera in front of strangers; or whilst forcing her to watch women and children being sexually violated)

Intimidation

Threats

- To destroy her family if she left him (including by suicide).
- To have acid thrown into the face of her sister and two young nephews.

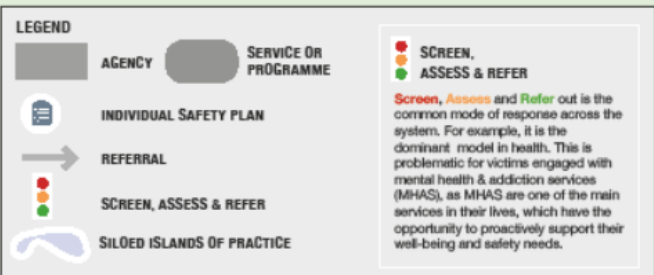
Surveillance

- Dinendra set up and monitored her email, social media, phone and bank accounts.
- She had to text/phone her movements.
- He was going to sell her car and had been rostered onto her ward and shifts.

Degradation

- “Sexual torture.”
- Forcing her to participate in acts that violated her deeply held values.







Royal Commission
into Family Violence

Summary and recommendations

March 2016

The Challenge

- Shift the way we think about intimate partner violence
- Translate that thinking into new ways of responding to intimate partner violence

FVDRC: Appendix to “Social Entrapment”: List of questions for practitioners: <https://www.hqsc.govt.nz/our-programmes/mrc/fvdrc/publications-and-resources/publication/3444/>

R v Barrett (2019) 371 CCC (3d) 263: Crown put to proof