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Advancing Socially Just Intimate Partner Violence Expert Testimony for Victim-Survivors Charged with Homicide: Critiquing the Old Bones of Knowledge

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Abstract

In assessing whether victim-survivors of intimate partner violence (IPV) were acting in self-defence in response to homicide charges, the criminal court favours disciplinary knowledges which erase social context and structural violence. This article argues that these factors are integral to understanding victim-survivors' experiences of IPV. The courts' overreliance on Euro-Western psych disciplines (psychiatry and psychology) that privilege neoliberal ideas of self and perpetuate flawed psychological theories of IPV is a significant problem. Critically, the white epistemology underpinning the psych disciplines and mainstream theories of IPV omit any appreciation of the operation of colonial violence, institutional racism, and the marginalisation of Indigenous women. This article suggests that experts must be able to critique the family violence response system using intersectional and anti-colonial conceptual frameworks. This will assist the criminal courts in understanding Indigenous and marginalised women's realities and support socially just outcomes in cases involving prosecuted victim-survivors. The article concludes by sharing the authors' insights from providing expert evidence on social and systemic entrapment at trial and sentencing in the 2020 New Zealand case of *R v Ruddelle*.

Keywords: Intimate partner violence; Indigenous and marginalised women; homicide; institutional racism; colonialism; decolonisation.

Introduction

Intimate partner violence (IPV) victim-survivors are at risk of unfair and unjust outcomes when charged with homicide for killing their abusive partners. Misconceptions about the dynamics of IPV inform jurors' understanding and sense-making of facts and contribute to such outcomes (Nash and Dioso-Villa 2023:13; Schuller and Hastings 1996). Such misconceptions are particularly marked for Indigenous and racialised women who live with IPV. For example, Indigenous and racialised women experience differential and inequitable access to, and responses from, the family violence safety system (including police, welfare agencies, and family violence services). Research has shown that, for Indigenous women, the responsiveness of the family violence safety system is not as imagined by those unfamiliar with how it works in practice (Wilson et al. 2019). When

assessing the reasonableness of these women's self-defence claims, juries may erroneously assume the defendant had access to alternative legal means of being safe.

Various strategies have been used or suggested to address misconceptions about the nature of IPV when victim-survivors are on trial for homicide. These have included modifying or removing legislative requirements in the criminal defences that might act as barriers to fully considering the IPV to which the defendant was responding,[1] and educating judges and lawyers on IPV. The range of evidence that can be introduced in family violence cases has also been expanded,[2] including what qualifies as expert evidence,[3] and jury directions legislated explaining the nature of IPV.[4] It has also been suggested that defence counsel should make 'no-case submissions' when the prosecution fails to discharge its burden of disproving self-defence because its case is based on inaccurate understandings of IPV (Tarrant 2023). This article discusses expert evidence on the nature of IPV at trial, which can be used to challenge proof of the elements of the offence and/or support possible defences, such as self-defence. Expert evidence also assists the jury in accurately understanding the circumstances to which the defendant was responding to when they acted.

This article addresses the socio-historical framing of knowledge and knowing when expert evidence on IPV is introduced in criminal trials involving prosecuted victim-survivors. This stems from the position that knowledge is imbued with power (Reid, Cormack and Paine 2019). Therefore, it is critical to interrogate the complexities of power and privilege in the production, structure, and impact of knowledge when trying to secure socially just outcomes for prosecuted victim-survivors. In such cases, it matters greatly what frames of knowing experts draw upon to make sense of the facts presented at trial, who is considered an expert, and in what cultural and practice realities their expertise is grounded.

The first section of this article asserts that expert testimony at victim-survivors' trials has predominantly been provided by experts from the psych disciplines (psychiatry and psychology). This testimony has mainly focused on explaining the impact of the abuse on the victim-survivor. This remains so despite paradigm shifts in mainstream understandings of IPV. These should have transformed this approach by shifting the focus onto understanding the abuse strategies of the person using violence and the broader social context in which the victim-survivor is located. The second section of this article proposes that the experiences of Indigenous and racialised victim-survivors must be central to the expert's expertise and the conceptual lens they use to understand IPV in these cases. This requires attention to the operation of colonialism in settler colonial states, including the ongoing role of colonialism in shaping what counts as knowledge and who is considered an expert. Based on the authors' collective experience of providing expert evidence, the third section of this article presents an alternative way of understanding and doing expert evidence in these cases, at trial and sentencing. This may be of particular use to international audiences. Referring to the New Zealand homicide case of *R v Ruddelle (2020)*, the authors argue the need to employ a new framework for understanding IPV. This must render visible the socio-historical and socio-cultural experiences of *all* victim-survivors, not just the most privileged. The authors also argue the need for multi-faceted expertise in (a) colonialism and state and structural violence, (b) the socio-cultural realities of the defendant on trial, and (c) the actual operations of the family violence safety system. Rather than attempting to find all these forms of expertise in one person or a single discipline, ways of working are suggested that allow expertise to function collectively.

Expert IPV Testimony in Criminal Cases

Since the 1970s, theories of IPV have shifted from Euro-Western psychopathological theories of Battered Woman Syndrome (Walker 1979) and traumatic bonding (Dutton and Painter 1981) to mainstream feminist sociological theories of power and control (Pence and Paymar 1993), coercive control (Schechter 1982; Stark 2007), and typologies of domestic violence (Johnson 2008). This shift, which has informed the broader family violence sector, has not occurred in the criminal justice system. The introduction of expert testimony to explain the nature of IPV in homicide cases involving the prosecution of victim-survivors has been dominated to date by two entangled forms of knowledge. First, experts from the Euro-Western disciplines of psychology or psychiatry generally provide expertise at trials. Second, despite slight differences in language, these experts (along with judges and lawyers) remain wedded to an understanding of IPV that is still essentially grounded in Battered Woman Syndrome.

The Nature of the Expertise: The Psych Disciplines

A small number of Australian cases have admitted evidence from social workers and, in one instance, a law professor to support a victim-survivor's case for self-defence (*R v Yeoman (2003)*: para. 32; *R v Gadd (2010)*; see also *DPP v Williams (2014)*: paras. 33-34). There are also statements from Australian law reform bodies that support a broad understanding of what constitutes family violence expertise (Victorian Law Reform Commission 2004: 183). Furthermore, recent legislative reforms in Western Australia have clarified that family violence expertise is to be interpreted broadly. Section 39(4) of the *Evidence*

Act 1906 (WA) indicates that '... an expert on the subject of family violence includes a person who can demonstrate specialised knowledge, gained by training, study or experience, of any matter that may constitute evidence of family violence'.[5]

However, in the overwhelming majority of Australian cases in which expert testimony is admitted at trial, those testifying are psychiatrists or psychologists (Nash and Dioso-Villa 2023: 13). Some courts remain attached to the notion that psychologists and psychiatrists are the most appropriate experts (*Liyanage v The State of Western Australia (2017)*: para. 83; *The State of Western Australia v Liyanage (2016)*). However, even if courts were willing to hear from non-psych experts, there may be practical barriers to introducing this expertise, such as a lack of suitably skilled experts available or willing to provide testimony (Chin 2020). In Aotearoa New Zealand (Aotearoa), *R v Ruddelle (2020)* is the only case of which the authors are aware where expert testimony was provided by someone other than a psych professional. In this case, the court received expert testimony at trial from an expert in the family violence safety system (expertise gathered from frontline advocacy and family violence death reviews).

Sociologist, Paige Sweet (2019b), suggests IPV, particularly gaslighting, is not well explained by psychologists or psychiatrists as it is a sociological rather than psychological phenomenon. Abusive behaviours, such as gaslighting, are effective precisely because of the social context within which they occur and the multiple forms of power operating in that context, on which abusive partners capitalise. The psych disciplines, orientated towards universal explanations of individual mental processes, are not directed at explaining this broader social context. When explaining the abusive context within which a victim-survivor is responding, their orientation is towards explaining the impact of this on the victim-survivor's mind (Douglas et al. 2021). Hence, professionals from disciplines directed at more comprehensive analyses of social and structural power might be more appropriate experts in these cases.

The Focus of Intimate Partner Violence Expertise

Battered Woman Syndrome: Violence Causes Women to Develop Mental Health Issues

Walker (1979), a forensic psychologist, drew from the psych disciplines to explain why not leaving an abusive partner was an ordinary or reasonable response to being abused (assuming victim-survivors had the means to leave between battering 'incidents' and that leaving would ensure safety). Walker claimed victim-survivors developed 'learned helplessness' or 'Battered Women Syndrome' in response to several cycles of abuse and became unable to see leaving as an option. Expert testimony on Battered Woman Syndrome was first accepted in the United States of America (US) (Schneider 1989) and then allowed in trials by criminal courts in Canada (*R v Lavallee (1990)*), Australia (*R v Runjanjic and R v Kontinnen (1991)*), and Aotearoa (*R v Ranger (1988)*). From its introduction, academics criticised Battered Woman Syndrome as an unscientific concept and an ineffective defence strategy (Larance et al. 2018: 63-67; Leader-Elliot 1993; Sheehy, Stubbs and Tolmie 2012; Tolmie and Stubbs 1995). Such evidence intended to explain why it was objectively reasonable for victim-survivors (i.e., battered women) to stay with an abusive partner. However, it was taken in court to explain victim-survivors' subjective and erroneous beliefs developed in response to the abuse. Therefore, as a defence strategy, Battered Woman Syndrome tended to support a partial defence to murder rather than the complete defence of self-defence, which necessitates the victim-survivor's use of defensive force to be 'reasonable' in the circumstances.

Other criticisms have been made of Battered Woman Syndrome expert testimony. Notably, Battered Woman Syndrome prescribes the behaviour women living with IPV must adopt, rather than describing their specific experiences and social realities (Terrance, Plumm and Rhyner 2012). In effect, it creates a standard of victimhood premised on passivity and pathology. This standard tends to be biased based on ethnicity, race, and class. Walker's 'battered woman' was based on, and perpetuated, dominant gendered stereotypes of middle-class white femininity, simultaneously excluding racialised and working-class women's responses to IPV (Allard 1991; Moore 1994; Stark 1995). Women who used physical violence to resist their victimisation did not behave in ways considered 'typical' of battered women because they did not demonstrate 'learned helplessness'. The women most likely to fight back were those unable to rely on people or services to protect them, with the least access to lawful options for addressing the violence. Battered Woman Syndrome supported the construction of these women as 'mutual aggressors' rather than as victim-survivors (Goodmark 2007). In the US, Battered Woman Syndrome was problematic for Black victim-survivors, who were not considered passive and helpless due to the endemic racist stereotypes about their assertiveness and aggression. In short, they deviated from white middle-class cultural standards of femininity (Allard 1991; Moore 1994; Stark 1995). Such negative racial stereotypes about Indigenous women also proliferate in other settler colonial states (see Cootes 2022; McGlade and Tarrant 2021: 111-112).

In the broader family violence sector, and sometimes in expert testimony in court, 'trauma' has replaced Battered Woman Syndrome. In the 1980s, the US saw the growth of the Euro-Western neurobiological 'trauma industry' (Bracken 2002), especially in the family and sexual violence sectors (Sweet 2019a, 2023). Euro-Western trauma-informed approaches are

intended to be responsive to victim-survivors' suffering, as exemplified by the question, 'what has happened to you?' Trauma-informed approaches are considered a significant departure from the biomedical and deficit-based approach, which asks 'what is wrong with you?' (Sweeney et al. 2018). Trauma-informed approaches are prevalent in the United Kingdom (UK), Australia, Canada, and Aotearoa. Experts at homicide trials can use trauma-informed approaches to explain why women did not leave their abusive partners and ultimately killed them (Scott et al. 2023). Stark (1995: 975) refers to both Battered Woman Syndrome and post-traumatic stress disorder (PTSD) as the 'traumatisation model'. Unfortunately, despite intentions to the contrary, trauma discourse still focuses on making sense of IPV through deficit-based explanations of the victim-survivor. It produces explanations about how the victim-survivor is physically or mentally impaired due to the abuse and how this trauma or mental health impairment prevented her from achieving safety. The catch-22 for victim-survivors is that they must prove 'psychological recovery' from trauma at the time of the killing in which case their safety responses are no longer considered to be shaped by the abuse they are experiencing or they are not recovered in which case they are considered to be operating out of trauma rather than credibly assessing the danger of their circumstances (Sweet 2019a; Wilson et al. 2019).

Social Context Evidence

There have been repeated attempts to introduce expert evidence about 'social context' (also called 'social framework evidence' or 'the battering context') into court to render visible the social realities and circumstances of women living with, and responding to, an abusive partner's violence (Bradfield 2002; Butler 2016; Douglas 2015; Dutton 1993; Schuller and Hastings 1996; Terrance, Plumm and Rhyner 2012). The aim of bringing victim-survivors' contexts into the courtroom is to demonstrate that these women are not passive, helpless, and suffering from a syndrome. Rather, they have taken action, such as responding through physical resistance, leaving the abusive partner, and seeking help (Tolmie et al. 2018; Tolmie, Smith and Wilson 2023; Wilson et al. 2019). Because of their circumstances, however, leaving was complex and did not produce safety. Often, women could not 'leave' due to potential retaliatory violence, insufficient refuge or shelter spaces, financial dependency, a lack of proactive police responses (Terrance, Plumm and Rhyner 2012), and an ineffective and unresponsive family violence safety system (Wilson et al. 2019). In other words, the defendant's ability to leave was not affected by her poor psychological state, but instead by a range of social and economic factors and a lack of safe alternatives. The intention was to demonstrate that using lethal means to defend herself was a rational response when faced with serious threats to life and that there was no viable alternative option for safety (Terrance, Plumm and Rhyner 2012). Significantly, social context evidence was intended to shift the focus from the victim-survivor's psyche to understanding her responses to a partner's life-threatening violence within the context of her lived experiences and circumstances. However, most of this testimony has been introduced by mental health experts as additional information to their evidence on Battered Woman Syndrome. This could be described as a Battered Woman Syndrome *plus* approach (see *R v Falls (2010)*; Mahoney 2019). Consequently, the social context information is undermined as it is tagged onto a way of making sense of violence which centres the victim-survivor's pathology as the interpretive lens.

Coercive Control: Revealing the Violence and Gender Inequity

Stark's (2007) reconceptualisation of IPV as coercive control has been heralded as the most significant development in our understanding of the nature of IPV in recent times (Wiener 2020). Underpinned by human rights thinking, the transformative potential of Stark's theory of coercive control was in framing IPV as a liberty crime. In other words, reframing IPV as a crime against a victim-survivor's ability to be self-determining (Stark 2007), achieved by means of strategically curtailing her autonomy and closing down her 'space for action' (Sharp-Jeffs, Kelly and Klein 2017: 164). The tactics of coercion (violence and intimidation) and control (isolation, deprivation, exploitation, and micro-regulation of everyday life) are uniquely tailored to a specific victim-survivor's life. This creates a mutually reinforcing web of behaviours with cumulative and compounding effects. This is why it is not possible to look at discrete acts of violence as though they reveal the whole story. It is the 'chronicity and pervasiveness' of coercive control that is critical to understand (Hamberger, Larsen and Lehrner 2017: 10).

Coercive control is a sociological construct, situating women's experiences of IPV from male partners within the broader operations of structural gender inequity within society. Importantly, it focuses on the abusive partner's ongoing pattern of coercive controlling behaviours, not on the victim-survivor's psyche. This is a paradigm shift in that it explains and renders visible the abuse tactics to which victim-survivors are responding. In doing so, it potentially renders their perceptions and responses as reasonable in the circumstances, rather than as informed by psychopathology (Tolmie, Smith and Wilson 2023). Feminist lawyers (such as Ahluwalia, Wade and Wistrich 2023) and legal scholars (Bettinson 2019; Sheehy 2017) have therefore advocated introducing expert evidence on coercive control in court in homicide trials where victim-survivors are arguing they acted in self-defence in killing their abusive male partners. Expert testimony on coercive control has been introduced in the US, Canada, and the UK in such cases (Bettinson 2019; Sheehy 2017).

Early indications are that introducing expert testimony on coercive control may not produce the anticipated transformative shift in the legal response to victim-survivors, and there may be several reasons for this. First, the courts may still prefer to accept this testimony from psych professionals rather than social scientists. One example is *R v Challen (2019)*, the leading UK decision in which evidence on coercive control was first introduced on appeal. In this case, the court preferred to accept the version of this evidence delivered by the psychiatrist, rather than Stark himself, a sociologist (Wade 2020: para. 9). In the 2008 Canadian case, *R v Craig (2011)*, involving a victim-survivor who killed her husband, Stark also provided expert testimony on coercive control at trial. However, Elizabeth Sheehy (2017) notes the judge found this expert testimony legally irrelevant for either self-defence or sentencing.

Second, there are indications that legal professionals do not understand the concept of coercive control and, therefore, may not be doing the exhaustive and detailed work required to properly apply it to the facts of cases (Sheehy 2017: 112-113; Tarrant, Tolmie and Giudice 2019: 54). The result is that coercive control may be misunderstood as a cause of trauma in victim-survivors in much the same way that Battered Woman Syndrome operated. This was exemplified by the Victorian Court of Appeal in *Rowan (a pseudonym) v R (2022)*. In applying the legal defence of duress to the facts, the court noted the coercive control in that case could have caused a reasonable person to develop Battered Woman Syndrome. As such, the reasonable person might have also thought that she could not leave the relationship. In other words, the court characterised the experience of coercive control over 22 years as potentially causing trauma in the mind of the reasonable person. This meant the person would also have been unable to achieve safety by leaving the abusive partner. However, the case involved a woman who had been living in rural Australia with an abusive partner since she was 18 and who repeatedly endured sexualised violence and abuse of herself and her two daughters. The objective reality of her circumstances was that she had nowhere to go, no one to turn to, no money, no transport, and no decision-making power in any part of her life. There was no need to understand these circumstances in terms of either her or the imagined reasonable person's mental processes. It was simply necessary to understand the objective realities of her life within which the reasonable person would also have been located.[6]

The Peculiar Durability of Battered Woman Syndrome

This brief overview suggests that attempts to reconceptualise IPV can often end up as modern variations of Battered Woman Syndrome. In other words, the abuse is ultimately still framed as a deficit in the victim-survivors' thinking about, and responses to, their circumstances. This is despite attempts to rethink IPV as causing trauma rather than a syndrome, to introduce the social context in which the IPV occurs, and to reframe IPV as coercive control rather than incidents of physical violence.

The durability of old ways of knowing about IPV, focusing on the victim-survivor's mental health, is evidenced by Nash and Dioso-Villa's (2023) analysis of 69 Australian homicide cases from 2010 to 2020 involving prosecuted victim-survivors. Their study also illustrates the related issue of psych professionals being those who provide expert testimony on IPV in court. They found forensic psychiatrists or psychologists continued to provide most of the expert evidence at trial or sentencing in the form of psychopathological assessments of the defendant.[7] A quarter (26%, n=18) of cases used Battered Woman Syndrome approaches, and almost a third (31%, n=21) provided psychological assessments documenting the abuse or diagnosed defendants as having pathological conditions unrelated to the violence. In only four cases (6%), the expert evidence took a more expansive approach that considered the social context in which the victim-survivor's offending occurred. In two of these cases, expert evidence took an expansive Battered Woman Syndrome approach (*R v Falls (2010)*; *R v Irsliger (2012)*. In the other two, experts testified under the framework of social context evidence (*DPP v Williams* (*2014)*; *Stephen v DPP (2018)*.

Every institutional setting has specific frames of knowing, which define the conditions of intelligibility and comprehension in relation to complex social phenomena (Sertler 2022: 172). The power operations of these dominant frames obscure, silence, and erase other ways of being and knowing (Ficklin et al. 2022: 56). The reasons for the durability of Battered Woman Syndrome, as a conceptual framework for understanding IPV, are complex and multifactorial. A significant issue is the nexus between the Western criminal justice process, founded on individual accountability, and the rise of neoliberalism (Lauri 2019). Neoliberalism reinforces the societal responsibilisation of female victim-survivors to secure their safety and bolsters the court's reluctance to acknowledge the role of structural conditions in shaping human behaviour and limiting choices (Coy and Kelly 2019; Gore 2022; Grant 2015). Rimke (2016) developed the concept of psychocentrism to understand how the pathologising and responsibilisation of people experiencing structural inequities in neoliberal societies occur through Euro-Western psy-knowledges and knowing practices. Psychocentrism refers to the 'hegemonic assumption that all human problems reside within, or are an effect of, the individual mind and/or body rather than a product and expression of social, political, historical, and economic problems' (Rimke 2020: 38).

Misrepresenting Coercive Control

Concerningly, coercive control is not only being reinterpreted through the lens of Battered Woman Syndrome. In some contexts, counter to Stark's conceptualisation, it is being conflated with psychological abuse. This is evident in the enactment of the offence of coercive control in England and Wales (*Serious Crime Act 2015* (UK), s. 76; cf. *Domestic Abuse (Scotland) Act 2018*, s. 2). The legislature positioned 'controlling or coercive behaviour' as primarily non-physical abuse to avoid duplication with other offences criminalising physical violence (Wiener 2020). The offence filled the gap by criminalising psychological abuse, as evidenced by a maximum penalty of only five years' imprisonment and the accompanying Home Office Statutory Guidance (2023: para. 5). This new course of conduct offence was considered by many as a long overdue recalibration of the criminal justice system's over-emphasis on incidents of physical violence towards a legal framework capable of addressing cumulative patterns of behaviours. A long-standing sector narrative is that psychological abuse has longer-lasting impacts than physical violence but has not received the same attention as a form of harm. McMahon and McGorrery, for example, state:

> Feminist researchers identified that physical violence constitutes a significant, but neither exclusive nor necessarily dominant, aspect of domestic abuse … and that there are other, often more serious forms of abuse, including psychological, emotional and economic abuse. (2020: 4)

Notably, Stark's conceptualisation of coercive control rejected the simplistic dichotomy between physical violence and non-physical forms of abuse (Myhill and Kelly 2019: 283; Wiener 2020: 167). His focus was not on the *categorisation* of types of abuse but rather on the *liberty violations* — describing how, *together*, a range of tactics operate to uniquely constrict the life space a victim-survivor has to be self-determining. Physical violence, or the threat of physical violence, is a coercive tactic that is frequently, although not always, present (Barlow and Walkate 2022; Stark 2007).

Concerningly, if coercive control is not understood as including physical and sexualised violence or the relevance of these forms of violence is pushed to the periphery, the social realities of women for whom severe physical and sexualised violence is a regular part of their partner's (and perhaps his associates') pattern of behaviour are obscured (see, for example, the brutalisation experienced by the defendant in cases such as *R v Kina (1993)*, *R v Wihongi (2011)*, and *The State of Western Australia v Liyanage (2016)*). Just as Battered Woman Syndrome rendered victim-survivors' experiences of severe IPV invisible, a similar phenomenon may be happening with coercive control. Focusing on coercive control and understanding coercive control in a manner that privileges non-physical forms of abuse continues to centre middle-class white women's experiences of IPV in criminal justice settings (Newton 2023: 138). To the degree that coercive control does recognise structural harms, these are confined to gender inequity. Stark and Hester (2018) acknowledge the limitations of coercive control for addressing broader structural inequities and state:

> The most obvious evidence of 'control' is provided by abusive tactics, such as 'he monitored my time' or 'denied me money.' But in the most vulnerable populations – undocumented women or women of color, for instance – individual deprivations are confounded by economic inequalities, cultural bias, and institutional barriers that have yet to be integrated into the model of harm, a process that Ptacek (1999) called *social entrapment.* (88)

As explained further in the following section, colonial, state-sanctioned, and structural violence (apart from gender inequity) are forms of violence that are not addressed by Stark's conceptualisation of coercive control. However, they are essential for understanding the over-representation of women subjected to intersecting forms of oppression in IPV statistics (Brown et al. 2022).

Who and What is Left Out of These Frames of Knowing and Why it Matters

This section posits that the lens used to understand IPV in these cases, and the kind of expertise that qualifies the expert to give testimony, must centre on the experiences of Indigenous and racialised victim-survivors. This requires attention to the operation of colonisalism in settler colonial states, including the ongoing role of colonisalism in shaping what counts as *knowledge* and who is considered to be an *expert.*

Colonial, State-Sanctioned, and Structural Violence: Indigenous Victim-Survivors' Experiences of IPV

The over-criminalisation of Indigenous victim-survivors, relative to other victim-survivors, is indicative of the intertwined nature of knowledge-related and socio-political injustices (Páez and Matida 2023) and is why socially just and accurate conceptualisations of IPV must inform expert testimony. Nash and Dioso-Villa's (2023) analysis of 69 Australian homicide cases involving prosecuted victim-survivors identified Indigenous defendants in 20 cases (29%). Yet, Aboriginal and Torres Strait Islander people constitute 3.3% of the Australian population. In Aotearoa, between 2009–2015, 12 of the 16 female primary victims who killed abusive partners, were Māori women (Indigenous women from Aotearoa). At that time Māori

comprised 13% of the population aged 15 years or over (Family Violence Death Review Committee [FVDRC] 2017: 54, 102). In Aotearoa, like other settler colonial states (McGuire and Murdoch 2021), Indigenous women's severe levels of interpersonal violence victimisation, criminalisation, and incarceration are not separate phenomena (Quince 2010: 349-350). The over-representation of Indigenous women charged with killing abusive partners is part of a larger ongoing pattern of systemic violence against Indigenous peoples. Settler colonialism severely disrupted the sanctity, status, and cultural protections Indigenous women experienced before colonisation (Dudgeon and Bray 2019: 5-6; McGuire and Murdoch 2021: 533; Mikaere 2017; Weaver 2008: 1154). Settler colonialism has enforced colonial patriarchy, institutional intergenerational trauma (Anthony, Sentance and Bartels 2020), systemic inequities, and institutional racism, subjecting Indigenous women to disproportionate gender-based violence victimisation and incarceration (Beichner and Hagemann 2022: 1790; Cunneen and Rowe 2015: 12-13; McGuire and Murdoch 2021; McIntosh and Workman 2017: 729-730). For example, Māori women report the highest lifetime prevalence rate of IPV in Aotearoa (64.6%; Fanslow et al. 2023) and are also more likely to be incarcerated. They comprise 66% of the female prison population (Department of Corrections 2021: 7). Furthermore, incarcerated women report high levels of family violence victimisation — 68% of women imprisoned experienced family violence (Department of Corrections 2021: 7).

For Indigenous women and their communities, the ongoing harms of colonial, state-sanctioned, and structural violence are also central to understanding the violence and neglect they experience when seeking help from agencies (DesLandes et al. 2022; Moreton-Robinson 2021). In the Australian context, Aboriginal and Torres Strait Islander women experiencing IPV are under-protected (Buxton-Namisnyk 2022; Cripps 2023) and over-penalised by the state institutions charged with helping them (McGlade and Tarrant 2021). McGlade and Tarrant, for example, have documented the violence Aboriginal women experience 'at the hands of the "justice" system' (2021: 106) when seeking help for IPV. Further, Wilson et al. (2019) highlighted how Māori women experiencing IPV fear having their children removed into state care when seeking help from agencies.

Widening the frames of knowing to include the multiple, intersecting forms of violence that Indigenous and intentionally marginalised women[8] experience does not diminish the harm from psychological abuse that some victim-survivors experience. Nor does it erase the architecture of coercive control experienced by all IPV victim-survivors. Rather, it draws attention to the forms of violence rendered invisible in mainstream theories of IPV and the harmful consequences of these omissions, and for whom.

Dominant ways of knowing privilege individualised narratives of gendered violence and biomedical understandings of victim-survivors' responses to violence. In doing so, they obscure the socio-historical context of the offending (Tolmie, Smith and Wilson 2023: 8-13). In criminal justice settings, epistemic oppression — knowledge-related forms of injustice (Dotson 2012, 2014) — occurs when ways of knowing about IPV omit significant parts of all victim-survivors' social realities, especially those of Indigenous and intentionally marginalised victim-survivors. Social realities are central to understanding why victim-survivors responded in the manner they did and why that response was 'reasonable' for the purposes of the criminal defences (Wilson et al. 2019: 32-37).

White Epistemologies and White Dominance in Existing Conceptualisations of IPV

A foundational problem with mainstream theories of IPV, whether psychological or sociological, is that they centre whiteness (Grande 2003: 330). The theorists are white, and their theories are based on white epistemologies. These discourses privilege white middle-class heterosexual women's experiences of IPV by failing to adequately interrogate experiences of race, class, or colonisation (Jonsson 2016, 2021: 159-182; Moreton-Robinson 2021: 179-186; Richie, Kanuha and Martensen 2021: 249-252; Wilson et al. 2019: 16). For example, strategies to understand IPV centred on coercive control alone are an example of what Jonsson has called 'white-centred feminism' (2021: 159). According to Jonsson, white-centred feminism differs from the white feminism of the 1970s and 1980s, in that it positions itself as having an analysis of racial differences but still centres on the social realities of white women. While there is an understanding of the impacts of gendered racialisation due to the influence of intersectionality (Crenshaw 1989, 1991), it is still frequently misused in a gender (white women) *plus* manner (Bilge 2013; Christoffersen and Emejuluto 2023). Furthermore, while intersectionality demonstrates how race and gender[9] invisibilise Black women (structural intersectionality) and Black feminism (political intersectionality), it does not address from where the categorial logics of race and gender originated (Velez 2019). As a framework, intersectionality alone fails to address the operations of coloniality or settler colonialism.

In a similar manner, Euro-Western trauma-informed discourse does not address colonial and structural forms of violence and, therefore, reinforces white dominance (Clark 2016; Million 2013; Pihama et al. 2017; Thompson 2021). Trauma-informed discourse supports the reframing of complex social problems and collective experiences of oppression into medical diagnoses

addressed through individual mental health treatment (Tseris 2018: 251). For example, Million (2014) observes that in Canada the outcomes of colonisation are now measured and diagnosed as trauma. She warns:

> [a] theory that has started to prevail is that we have an illness, trauma, and that we must heal. What our 'wounds' actually are and how we heal, we must consider carefully. We must consider what this theory tells us about ourselves and what we might need to tell others about this theory. (2014: 39)

Going Beyond Intersectionality to Address the Colonial Logics of Race and Gender

Maria Lugones (2008), discussing the Iberian colonisation of Abya Yala (the Americas) and the subsequent European colonialisms of Latin America, stated that the colonial categorial logics of race and gender are co-constitutive, with the racialised classification of people as a necessary precondition for the imposition of the coloniser's gender system.

In the colonisation of Abya Yala, gender became one of the marks of being human, as the colonising Europeans did not consider enslaved Africans or the Indigenous peoples (fully) human (Lugones 2020). Instead, they were considered animals, which are sexed but not gendered. For Lugones (2020) the imposed colonial/modern gender system only constituted middle-class European men and women as gendered. African and Indigenous women were 'sexually marked as female, but without the characteristics of femininity' (Lugones 2008: 13; Collins 2000).

To fit with the global processes of Euro-centred capitalism, Lugones stated women racialised as inferior were now changed from animals into 'modified versions of "women"' (2008: 13). This lesser woman status constructed Indigenous women's bodies as other, objectified, sexually available, and, as Razack (2016) points out, 'disposable'.

Indigenous women in settler colonial states face severe levels of physical and sexualised violence directly from intimate partners and other men, and through the complicity (either actively or passively) of male state actors (García-Del Moral 2024). This is evidenced by the unacceptable numbers of Indigenous women who are violently 'disappeared' (McQuire 2022) in the US (Ficklin et al. 2022), Canada (García-Del Moral 2024; Palmater 2016), and Australia (McQuire 2022). These women are either missing or murdered. This violence cannot be removed from the wider context of white settler violence (Day and Carlson 2024), white settler masculinity, and white men's collective sense of entitlement to practice a certain form of brutality and terror on Indigenous women's bodies (University of Regina Faculty of Arts 2022).

Lugones's (2008, 2010, 2020) conceptualisation of the 'coloniality of gender' draws our attention to the severe limitations of contesting gendered violence when coloniality and settler colonialism are left unchallenged (Tapia Tapia 2022: 7). Of course, the concept of 'coloniality' (Quijano 2000, 2007) needs to be grounded and understood within specific sites of colonial oppression because the dynamics of Eurocentric global systems of power have complex heterogenous histories and specific contemporary consequences in different nation-states (Rosenow 2023; Tucker 2018).

However, Lugones's work on the coloniality of gender makes clear how the imposition of gendered racialisation is fundamental to the establishment and the continuance of colonial forms of power within settler states. This is why decolonising and anti-colonial conceptual frameworks and praxis are required in settler states. As Speed states, 'decolonization is the only way to eliminate the racial and gendered logics that intersect inevitably to generate conditions of oppression and violence for Indigenous women, and for us all' (2020: 82).

The criminalisation of coercive control in settler colonial states, such as Australia, is the opposite of a decolonial approach. Instead, it continues the expansion of what Cunneen and Tauri (2017: 65) have termed the 'penal/colonial complex' — a term that describes the manner in which settler colonial states function as penal states for Indigenous peoples. The current push to criminalise coercive control across Australia is likely to result in more (the continuance of) Aboriginal and Torres Strait Islander women being under-protected and over-criminalised by the state (Buxon-Namisnyk, Gibson and MacGillivray 2022; Sisters Inside [SIS] and Institute for Collaborative Race Research [ICRR] 2021; Watego et al. 2021). Aboriginal and Torres Strait Islander scholars have repeatedly expressed concerns that Indigenous women will not meet the (white) ideal standard of victimhood and will be misidentified as predominant aggressors (Longbottom, McGlade and Cripps 2024). This is an example of white-centred feminism's construction of Aboriginal women as 'disposable' (Longbottom, McGlade and Cripps 2024; Razack 2016). Jones and Anyieth (2023) have also voiced concerns about how women from culturally and linguistically diverse (CALD) communities are treated as 'collateral damage' in the campaign to criminalise coercive control in Australia.

In Australia, Aboriginal and Torres Strait Islander and CALD victim-survivors are those least likely to be assisted by expert testimony that focuses solely on coercive control if they are attempting to raise self-defence in response to homicide charges based on their lethal resistance to an abusive partner. Relying on expert evidence of coercive control for these women renders invisible those aspects of their experience and circumstances that are perhaps more salient. Certainly, these aspects are crucial to understand if their responses to IPV are to be rendered intelligible as 'reasonable' and 'rational' for the purposes of meeting the legal requirements of self-defence. Focusing only on introducing expert evidence on coercive control is therefore likely to be ineffective but is also unethical and inequitable.

The Coloniality of Knowledge and the Criminal Justice Process

Quijano (2000, 2007) refers to the 'coloniality of knowledge' to address how the legacies of European colonialism endure in the domains of knowledge generation, structure, and influence. This draws attention to 'what counts as knowledge, who produces knowledge and how, and what/who are absent from this enterprise' (Dutta 2022: 66). Knowledge is inseparable from power and, together, they create 'the coloniality of being' (Maldonado-Torres 2007) — the lived experience of coloniality. The coloniality framework usefully critiques global knowledge production systems, which have specific consequences for prosecuted victim-survivors. For example, the dimensions of coloniality shape who is considered an expert and what expertise is valued and deemed legitimate in court when victim-survivors are prosecuted. It also shapes whose measures of being and standards of victimhood defendants are being judged against.

Tapia Tapia suggests a Western colonial separation-based ontology informs liberal legality. This constructs reality as comprising separate and hierarchically classified entities (Tapia Tapia 2023: 7), a worldview that is the antithesis of Indigenous relational and wholistic epistemologies, which understand the interconnectedness of everything (Goodchild 2022). In the criminal law context, Tapia Tapia (2023: 8) argues that this Western ontological assumption of separateness supports the law's adherence to abstract legal principles such as 'fairness', 'impartiality', and 'objectivity' and the idea that universally applicable standards of morality exist outside of the socio-material conditions of people's lives. This assumption of separateness also constructs bodies of knowledge as ahistorical and non-situated and people as individual rational and autonomous knowers. Arguably this is why Euro-Western psych knowledge and professionals are privileged by criminal courts. Their rendering of reality does not challenge the ideology of individual responsibility and free choice; hegemonic European masculinity and the construct of the universal human subject; the applicability of universal knowledge; or scientific conventions, including notions of 'neutrality' and 'impartiality'.

The Discipline of Psychology: Racial and Colonial Hierarchies

There is a growing critique of the hegemony of Euro-Western psychology and the discipline's complicity in coloniality, systemic racism, sexism, and epistemic violence (Fish and Gone 2024; Rimke 2018; Rua et al. 2021). In 2021, the American Psychological Association (APA 2021) and the American Psychiatric Association (2021) apologised to 'People of Color' and 'Black, Indigenous and People of Color', respectively, for the disciplines' active role in maintaining and supporting structural racism. The APA specifically acknowledges that 'traditional diagnostic methods and standards do not always capture the contextual and lived experiences of people of color, which influences mental health outcomes and emotional well-being' (2021: 3). Furthermore, the discipline had failed 'to effectively elevate the science behind the disproportionate concentration of adverse social determinants of health in communities of color' (2021: 3). It is noteworthy that, in these apologies, racialisation has replaced 'colonisation as the site of critique' (Byrd 2011: 211). However, while Indigenous peoples are subjected to racial *and* colonial hierarchies, Indigenous peoples are not a 'race', rather they are citizens of sovereign Tribal Nations (Fish et al. 2024). Addressing systemic racism is not the same as honouring Indigenous sovereignty. In 2023, the APA issued a further apology to First Peoples in the United States, which went some way to acknowledging its role in the settler colonisation of Indigenous peoples. However, this apology took a diversity and inclusion approach to knowledge production and workforce development, rather than committing to becoming anti-colonial. In other words, it promised to add Indigenous experts and Indigenous knowledge into the disciplinary knowledge base without critiquing the body of existing knowledge as colonial (Liboiron 2021).

Considering the severe limitations of Euro-Western psychology and psychiatry, Douglas et al. (2021) suggested increasing the range of professionals who can provide expert testimony. They recommended using social workers and social scientists instead of psychologists and psychiatrists as experts in such trials. Social workers, such as Ono (2016), argue social work's social justice values and practice, which focus on the 'understanding of systems, services, and resources' (Ono 2016: 34), better position social workers with IPV expertise to provide social context expert testimony. However, it is worth pointing out that social work and the social sciences are not neutral bodies of knowledge. As BlackDeer (2023) makes clear, the discipline of social work is also complicit in coloniality and white dominance.

Euro-Western psychology and psychiatry focus on the mind. Conversely, the central tenets of Indigenous psychologies (Duran 2019; Rua et al. 2021 Waitoki, Dudgeon and Nikora 2018), liberation psychologies (Comas-Díaz and Torres 2020), and decolonising psychologies (Cullen et al. 2020) are analyses of power and oppression, the inalienable right to self-determination, and the importance of transformative action. These psychologies do not make disembodied claims to objective knowledge (Strakosch and Macoun 2020) but start from the premise that knowledge is always culturally and historically contingent.

Knowing the Limits of Your Expertise: The Dangers of Imagined Expertise

A further significant problem with the current positioning of mainstream psychologists and psychiatrists as the experts relates to the fact that their expertise is mainly clinical. Understanding how the family violence response system functions is essential for making sense of the responses of *all* prosecuted victim-survivors. Mainstream psychologists and psychiatrists' understanding of the quality and efficacy of the responsiveness of the family violence system is likely to be from the perspective of 'work as imagined', rather than 'work as done' (Braithwaite, Wears and Hollnagel 2015). Braithwaite, Wears, and Hollnagel state that work-as-imagined always differs from what actually occurs, a difference that increases the further removed people are from frontline practice. Interestingly, in *DPP v Bracken (2014*) in Victoria, a forensic psychiatrist gave expert evidence on the effects of IPV. They commented on the relative effectiveness of the family violence response system for female victim-survivors and its relative ineffectiveness for male victim-survivors (Bracken transcript: 1007-1009). The case involved a male defendant who shot his mentally unwell partner, who had been abusive towards him, five times. The expert's impression of the operation of the family violence safety system is an example of imagined practice. It is contradicted by the insights into the systemic functioning of the family violence safety system that emerge from family violence death reviews (FVDRC, 2016). It is important that psychiatrists are not being permitted to give evidence outside their disciplinary expertise. Notably, psychiatrists are experts on mental health, rather than the functioning of the family violence safety system.

In cases involving Indigenous and racialised defendants, experts providing testimony need to be cognisant of the limits of their knowledge, and of what and whose bodies of knowledge their expertise is based upon. Indigenous ways of knowing (Wilson et al. 2021) must inform expert testimony concerning Indigenous defendants.

Doing Things Differently: Advancing Socially Just Praxis

R v Ruddelle (2020) was a New Zealand case that involved a Māori woman charged with the murder of her abusive partner who was seeking to raise self-defence. This case was the first time expert evidence on social and systemic IPV entrapment was admitted at trial from a family violence specialist who was not a psychologist or psychiatrist. At sentencing, evidence of social and systemic entrapment was also provided in the form of a cultural report under Section 27 of the *Sentencing Act 2002* (NZ).[10] The defendant in *R v Ruddelle (2020)* was not successful in raising self-defence at trial and was convicted of manslaughter in a majority jury verdict. The authors have analysed in detail elsewhere why expert testimony on IPV entrapment may not have resulted in an acquittal on the basis of self-defence in this case, and discussed the gains made at sentencing in this and subsequent cases (Tolmie, Smith and Wilson 2024). This article concludes by sharing some reflections from providing expert evidence in this case. These are relevant to the manner in which expertise is constructed and understood, as explored in this article.

Social and Systemic Entrapment: A Conceptual Framework Which Includes All Victim-survivors

Anti-colonial approaches to the generation of knowledge seek to make the mechanisms of coloniality and settler colonialism known so they can be countered (Patel 2014). Such approaches adopt strategies that include centring Indigenous resistance to colonial knowledge systems (Fish and Gone 2024) and developing conceptualisations of IPV that do not function as forms of epistemic oppression against prosecuted victim-survivors and their communities.

The conceptualisation of IPV as a form of social and systemic entrapment (FVDRC 2016; Ptacek 1999: 10; *R v Ruddelle (2020)*; Tolmie et al. 2018; Tolmie, Smith and Wilson 2023; Wilson et al. 2019) provides a framework that encompasses other ways of knowing. It also provides knowledge about the life experiences of victim-survivors who have been rendered invisible in previous narrow, inaccurate, and harmful conceptualisations of IPV. It is a 'depathologising' (Tuck 2009) framework because it does not focus on the victim-survivor's mental processes, and it can reveal prosecuted victim-survivors experiences of colonial 'multisided' violence (García-Del Moral 2024; Menjívar and Walsh 2017).

A social and systemic entrapment framework requires making sense of a victim-survivor's experiences of IPV through the careful investigation of three inseparable and mutually reinforcing dimensions of entrapment. It requires an investigation into:

1. how the infrastructure of colonial violence, the operation of state-sanctioned violence, and structural inequities in the victim-survivor's life shape the quality of responses available to her, her children, and her relational support networks, and can compound her abusive partner's use of violence;
2. the efficacy of social responses and the responsiveness of the family violence safety system to victim-survivors, their (ex) partners, their families, kinship networks, and communities; and
3. the abusive partner's pattern of coercive controlling behaviour and how this constricts the victim-survivor and their children's ability to be self-determining (Tolmie, Smith and Wilson 2023: 8-9).

An entrapment framing includes the experiences of white middle-class women but does not centre these as the most important and only visible experiences. Crucially, it employs a 'trickle-up' rather than a 'trickle-down' approach. Spade explains how a trickle-up approach is an 'ethical stance':

> in the face of enormous violence it is only right to start with those under the worst and most dangerous conditions. It is also strategic. We have seen again and again that when those who are the least vulnerable of the targeted constituency are prioritized, the declared victories do not trickle down. (Spade, quoted in Nichols 2013: 48)

Conversely, as illustrated in this article, Battered Woman Syndrome and coercive control are trickle-down approaches. These are ways of conceptualising IPV that do not work for all victim-survivors and are actively detrimental to those victim-survivors most in need of equitable justice responses.

An entrapment lens requires contextualising the partner's abuse within the specific socio-historical context in which the victim-survivor, their children, abusive partner, families, kinship networks, and communities are located. An integral part of this social context is the responsiveness of the family violence safety system over time. It is essential to consider how harmful service responses are experienced intergenerationally (e.g., family experiences in state care can influence multiple family members' trust in state agencies). This analysis of system responsiveness is missing in Battered Woman Syndrome and coercive control conceptualisations and is what expert evidence on 'social context' was attempting to introduce.

The three dimensions of entrapment are indivisible and do not function in an additive manner. To make sense of victim-survivors' responses to violence, we must make visible all the forms of power with which they are contending. In making decisions to act, victim-survivors interpret what the abusive partner is doing at the time in the light of what he has done before, what she knows he is capable of doing to her and others, and what level of social and system responsiveness she can count on. In victim-survivors' experiences, their partner's violence, the system's responsiveness, and structural violence and oppression are intertwined and mutually formative. Their responses to the abuse they are experiencing are shaped by *all* these operations of power. Experts require an in-depth understanding of, and professional capability training in, the concept of social and systemic entrapment to use it correctly. Shallow praxis could inadvertently misrepresent this conceptual framework as a coercive control *plus* approach.

The Value of Collective Expertise

Various perspectives and forms of expertise (i.e., cultural, legal, lived experience, research, and frontline family violence practice) are likely required to accurately reflect the defendant's multi-dimensional life experiences and convey that in a manner relevant to the court process. Indigenous practitioners and scholars must be involved in providing expert evidence for Indigenous defendants. A collective approach is needed to deliver expertise at trial because it is unlikely that all the necessary forms of knowledge reside in one person. Working in a complex space requires taking multiple perspectives and not privileging one individual's expertise or dominant worldview.

In *R v Ruddelle (2020)*, the collective involved three of the authors, who all have years of experience undertaking the work of the New Zealand Family Violence Death Review Committee. These experts consist of a Professor of Māori Health who is an expert in understanding violence in the whānau (the extended family networks of Māori); a Professor of Criminal Law, with specific expertise in defending victim-survivors; and a practitioner with many years of experience in frontline family violence work and undertaking systemic family violence death reviews. All three have years of experience in social and systemic IPV entrapment praxis (FVDRC, 2016; Tolmie et al. 2018; Tolmie, Smith and Wilson 2023; Wilson et al. 2019, 2021).

Having the right experts and undertaking collaborative reflexivity in preparation for trial guards against the inadvertent use of old, inaccurate ways of thinking about IPV. Old ways of thinking can surface even in the analysis of those who have long experience working in this field. This may reveal itself, for example, in a collapse into incident-based thinking or individual

narratives of violence, a default to Western diagnostic trauma explanations for responses to violence, or an assumption that the victim-survivor should have left the abusive partner (Wilson et al. 2021).

The importance of having the right expertise goes beyond the presenting expert's testimony at trial. Asking the right questions when interviewing a defendant to prepare a report for the court is significant in assisting the defendant in understanding what is relevant in their experiences and why. An entrapment framing supports asking questions that reveal all the forms of harm to which the victim-survivor was responding (including state and structural violence and oppression across generations). It renders visible agency responses to victim-survivors (which, in turn, supports making sense of their tactical safety responses) and victim-survivors' resistance strategies (which can counter pathologising narratives). Some victim-survivors have never been asked about the first and second dimensions of entrapment by professionals. Consequently, they may not have had the opportunity to articulate the relevance of these aspects of their experience, even to themselves. Experts who make this context visible support prosecuted victim-survivors in preparing for cross-examination.

Furthermore, a collective approach to reviewing and refining the expert report for the court, pre-trial preparation for the (re)presenting expert, and post-trial reflection is vital for sustainability in this work. In practice, providing expert evidence is complex, unpredictable, and precarious work, and many power dynamics must be navigated. There is a need to support those involved throughout the process, as unjust outcomes for defendants are not easily dismissed by those committed to effecting social change.

To advance socially just praxis, we suggest the establishment of localised practice collectives. These would include legal academics/practitioners, people with experience in family violence system responsiveness who are skilled in social and systemic entrapment analyses, and cultural experts from the same cultural backgrounds as defendants.

Including Legal Expertise

A legal academic/practitioner with expertise in IPV entrapment is essential in this collective as this assists the presenting expert at trial in speaking into the legal context. For example, health professionals are engaged in a disciplinary undertaking that is very different from the legal process. Euro-Western trained health professionals are involved in the task of diagnosis and treatment, whilst legal professionals are involved in the task of determining culpability using a particular Euro-Western theoretical framework for understanding culpability. Critically, information can be selected and presented by well-intentioned health professionals in a manner that lands in the legal context in unintended ways and may produce harmful outcomes for the defendant (Tolmie, Smith and Wilson 2024).

Reflexivity, Accountability, and Equitable Practice

An entrapment framework requires experts who can comprehend the life experiences of the defendant from a structural perspective. They need to be able to provide critical analyses of how multiple forms of power operate in the defendant's social reality. Experts could come from a range of professional backgrounds. What is essential is their ability to be reflexive about their disciplinary bias and positionality, and the limits of their knowledge. Uncomfortable reflexivity (Pillow 2003), which focuses on ‘whether we can be accountable to people's struggles for self-representation and self-determination’ (Visweswaran 1994, cited in Pillow 2003: 193), is needed. Reflexivity should be unsettling. For example, it is not about acknowledging your (white) privilege but instead focusing on disrupting structures of white dominance (Tang Yan et al. 2022).

Expertise in the Systemic Operation of the Family Violence Safety System

The presenting expert must have the capacity to withstand what can be a difficult and stressful experience without making incorrect and damaging concessions, simply because of the pressure they are under. It is helpful if the presenting expert at trial has experience working within and/or reviewing family violence response systems (Tolmie, Smith and Wilson 2024). For example, in *R v Ruddelle (2020)*, the prosecution suggested the deceased had stopped using violence by the time of his death. They also asserted that the victim-survivor had a repertoire of strategies for effectively managing his violence that she chose not to use on this occasion. The suggestion was that she simply ‘snapped’ and killed him because she was angry (Ruddelle transcript: 430). These were narratives the family violence specialist was able to authoritatively counter when they were presented to her, because of the extensive frontline and death review experience she was able to draw upon: ‘I can't think of any case where I could say that someone has snapped in anger and killed their abusive partner, so I couldn't reply in the affirmative … I think that is probably a misconception’ (Ruddelle transcript: 430). At trial, unlike sentencing, experts are subject to cross-examination regarding their opinions.

Conclusion

Anti-colonial ways of thinking about IPV must be realised with new ways of doing expert evidence. For prosecuted victim-survivors, especially Indigenous victim-survivors, IPV expert testimony drawn from the Euro-Western psych disciplines is likely to operate as a form of epistemic oppression, due to these ways of knowing being significantly shaped by coloniality, systemic racism, and sexism. This article has suggested that, to advance socially just praxis at trial, prosecuted victim-survivors' experiences of 'multisided' violence (Menjívar and Walsh 2017) are best represented by multifaceted collective approaches to expert testimony, which present IPV as a form of social and systemic entrapment. This conceptual framework renders visible the socio-historical and socio-cultural experiences of *all* victim-survivors, rather than just those most privileged. Critically, it centres on the actual responses of the family violence safety system to victim-survivors facing lethal violence, rather than pathologising their psyche.

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[1] For example, removing the requirement for an imminent attack in order to be acting in self-defence (*Crimes Act 1958* (Vic), s. 322M(1)(a); *Criminal Code Compilation Act 1913* (WA), s. 248(4)(a)) and/or modifying how proportionality is assessed for the purposes of self-defence (*Crimes Act 1958* (Vic), s. 322M(1)(b); *Criminal Law Consolidation Act 1935* (SA), s. 15B(1)). In Canada, both imminence and proportionality have become factual considerations when appraising what is reasonable self-defence in the circumstances, rather than strict legal requirements (see *Criminal Code 1985* (Can), s. 34(2)).

[2] See, for example, *Crimes Act 1958* (Vic), s. 322J (1); *Evidence Act 1928* (SA), ss. 34W, 34X; *Evidence Act 1906* (WA), s. 38(1).

[3] Section 39(4) *Evidence Act 1906* (WA).

[4] See, for example, *Jury Directions Act 2015* (Vic), s. 60; *Evidence Act 1906* (WA), s. 39F.

[5] Enacted by Section 94 of the *Family Violence Legislation Reform Act 2020* (WA).

[6] Note that this case has been appealed to the High Court of Australia, which upheld the applicability of the defence of duress to this set of facts: *R v Rowan (2024)* HCA 9.

[7] Nineteen cases (28%) involved no expert evidence. None of the women (n=7) convicted of murder relied upon expert testimony. This suggests victim-survivors may be at risk of having their actions judged more harshly without expert evidence to support their defence.

[8] The term 'intentionally marginalised' draws attention to systemic oppression, which has created the conditions for people to be marginalised (Alaggia and Vine 2022: 4). In other words, it makes clear that marginalisation has a well-understood and deliberately unaddressed underpinning.

[9] Intersectionality was first used to explore the intersections between gender and race.

[10] In Aotearoa New Zealand, a cultural report can be provided at the discretion of defence counsel and is in addition to the standard pre-sentence report prepared by government agency staff. Reports under Section 27 can address cultural issues experienced by any community and there is no prescription as to what they contain or how they are formatted.

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