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Claims-making about the Battered Woman Syndrome in Expert Testimony and News Media : The Case of *R. v. Getkate*

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CLAIMS-MAKING ABOUT THE BATTERED WOMAN SYNDROME IN EXPERT TESTIMONY AND NEWS MEDIA: THE CASE OF *R. v. GETKATE*

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ABSTRACT

This study examines claims-making about the Battered Woman Syndrome (BWS) in the case of Lilian Getkate, who used the syndrome to substantiate a claim of self-defence after killing her abusive husband. The research is guided by the social constructionist perspective and employs content analysis to determine what claims are made in expert testimony and news media about the BWS. It examines how this construct is linked to the defendant and what claims are made about the criminal justice system's response to intimate partner violence and homicide. This research also considers the claims-makers themselves and claims regarding their expertise. Findings from this in-depth case study reveal the importance of expertise and credentials in claims-making and suggest that claims about the BWS, its relation to the defendant, and the law's response are constructed in similar ways in expert testimony and news media, though much more developed in the former.

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INTRODUCTION

Lilian Getkate has said that she remembers little about the death of her husband, Maury Getkate. She reported hearing heavy footsteps and two bangs before turning on the bedroom light to find her husband lying dead on their bedroom floor. She said that she called 911 to report that her husband had been shot and only during police questioning did she realize that she had been the one to shoot him. Lilian Getkate was charged with first-degree murder but pleaded not guilty and claimed self-defence based on an alleged history of domestic abuse. The court called upon three psychiatrists, one for the Crown and two for the defence, to testify on the subject of the Battered Woman Syndrome. A jury found Lilian Getkate guilty of manslaughter and the judge granted her a conditional sentence of two years less a day, to be served in the community.

The law has traditionally posed problems for battered women who kill because the experiences they report do not conform to the basic requirements of self-defence. In some cases, they may rely on expert evidence regarding the Battered Woman Syndrome to substantiate their claim of self-defence and encourage the court to consider their individual circumstances in its interpretation of the law. The Battered Woman Syndrome, first identified by psychologist Lenore Walker (1979, 1984, 2000), describes a set of psychological symptoms characteristic of women who have been victims of psychological or physical abuse at the hands of their intimate partners. Although battered women are more likely to be killed by than to kill their partners (Gannon, 2004), some do fight back against their abusers with lethal force. If they claim self-defence, they may

introduce expert evidence on the Battered Woman Syndrome to account for various aspects of the law, including reasonableness, imminence, proportionality, and retreat.

Expert evidence on the Battered Woman Syndrome was first used in Canada to acquit a battered woman of murder in the case of *R. v. Lavallee* (1990). Angelique Lynn Lavallee killed her common-law partner and claimed self-defence to justify her lethal response to ongoing violence in the relationship. The Supreme Court of Canada ruled on this case in 1990, upholding her acquittal and supporting an individualized, feminist approach to law. Despite concerns that this landmark decision might be interpreted by some battered women as a license to kill, this case did not lead to a dramatic increase in the number of women acquitted for intimate partner homicide (Frigon, 2003). In fact, women continue to face enormous pressure to plead guilty to lesser charges such as manslaughter because of the significant risk associated with using the Battered Woman Syndrome to support a claim of self-defence.

Much of the literature on the subject of the Battered Woman Syndrome in expert testimony comes from feminist researchers. This in-depth case study was inspired by feminist scholarship but I take a social constructionist approach. One of the central features of the social constructionist perspective is claims-making, the process by which individuals construct social problems and advocate particular solutions to these problems (Best, 1989a). This thesis examines claims-making about the Battered Woman Syndrome in expert testimony and news media in the case of *R. v. Getkate* (1998).

In Chapter One, I discuss the social problems of intimate partner violence and homicide in Canada and introduce the issues that will be discussed later in this chapter on the Battered Woman Syndrome and self-defence law. I describe the Battered Woman

Syndrome, its component theories of the cycle of violence and learned helplessness, and its relation to psychiatry's *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR, APA, 2000). I then outline self-defence law in Canada, discuss its four fundamental requirements (reasonableness, imminence, proportionality, and retreat) that create challenges for battered women who kill, and highlight some of the alternatives to self-defence law such as provocation, self-preservation, and psychological self-defence. I explore the purpose of expert testimony on the Battered Woman Syndrome and discuss findings from experimental research on its effectiveness. I then engage in a lengthy discussion of the criticisms of the Battered Woman Syndrome and its use in court. These criticisms focus on Lenore Walker's research methodology, the application of 'learned helplessness' theory to battered women, the individualization of law, the danger of creating a stereotype of the 'bona fide' battered woman (Chan, 1997), and the medicalization of women's experiences of abuse. I end this chapter with an examination of the case of *R. v. Lavallee* (1990) and discuss its significance, particularly with respect to Canadian self-defence law.

In Chapter Two, I introduce the social constructionist perspective and claims-making. I discuss primary claims-making and scientific evidence in court before introducing claims-making about the Battered Woman Syndrome in court. Finally, I introduce secondary claims-making about intimate partner violence and homicide in the media. In this chapter, I state the general objectives of this study and specify my research questions and hypotheses. The research questions are stated broadly but the analysis focuses on a single case to illustrate some of the general issues battered women who kill

face when relying on the Battered Woman Syndrome to substantiate a claim of self-defence. The research questions for the expert testimony component of this study are:

1. What claims do the expert psychiatric witnesses make regarding their qualifications and credibility as experts on the Battered Woman Syndrome?
2. What claims do the expert psychiatric witnesses make regarding the Battered Woman Syndrome? How do they define and describe this construct?
3. What claims do the expert psychiatric witnesses make regarding whether or not Lilian Getkate suffers from the Battered Woman Syndrome and other psychological symptoms related to intimate partner violence?
4. What claims do the expert psychiatric witnesses make about Lilian Getkate's perceptions and lethal response? What claims do they make about the law's response to intimate partner violence and homicide in general and in this case?

The research questions for the media component of this study were designed to parallel those of the expert testimony component in order to facilitate a broad analysis of the two inquiries. The media research questions are:

1. Who is making claims about the Battered Woman Syndrome in the media surrounding the Getkate case? If these claims-makers are considered experts, what kinds of experts are they?
2. How is the Battered Woman Syndrome defined and described in the news media in relation to this case?
3. How are claims about the Battered Woman Syndrome related to Lilian Getkate? What claims are made about her lethal response?

4. What claims are made about the law's response to intimate partner violence and homicide in general, in this case, and in other similar cases?

In Chapter Three, I detail the sample selection and data collection procedures for the expert testimony and news media samples. I then introduce content analysis and explain how I will use this technique to analyze trial transcripts and newspaper articles. This chapter also highlights the strengths and limitations of the methodology. I close with a detailed introduction to the case of *R. v. Getkate* (1998).

In Chapter Four, I outline the aim of my analysis and review the objectives of the research. I then present the findings from the testimonies of each of the three expert witnesses, Dr. Graham Glancy and Dr. Wendy Cole for the defence, and Dr. John Bradford for the Crown. For each testimony, I present evidence related to claims about expert qualifications and credibility, claims about the Battered Woman Syndrome, claims about Lilian Getkate and the Battered Woman Syndrome, and claims about the law's response. I then engage in a cross-expert analysis to highlight themes related to the claims-makers and their claims before the court. The next section of this chapter presents an analysis of claims-making about the Battered Woman Syndrome in the news media. I examine claims-makers and their claims in sixteen articles printed in *The Ottawa Citizen* and *The National Post* around the time of Lilian Getkate's trial. Finally, I discuss the findings and explore the significance of claims-makers and their claims in both expert testimony and the news media.

In Chapter Five, I link the findings of this study on claims-making about the Battered Woman Syndrome to self-defence law and to intimate partner violence and homicide. I also note the significance of the case of *R. v. Getkate* (1998) in more recent

cases. I close by making recommendations for future research on claims-making and the Battered Woman Syndrome in court and in the media.

CHAPTER I

THE BATTERED WOMAN SYNDROME AND SELF-DEFENCE LAW

1. Intimate Partner Violence and Homicide in Canada

Intimate partner violence is increasingly being recognized as a serious criminal act and social problem in Canada rather than as a private matter. In 2002, nearly 35,000 people, 85% of whom were women, were victims of police-reported intimate partner violence (Brzozowski, 2004). Feminist analysis views wife assault as stemming from a patriarchal notion that women are the property of their husbands and that men have the right to 'discipline' their wives (Schneider, 1980; *R. v. Getkate*, 1990). Despite recent advances, the criminal justice system has historically failed to protect women from male partner violence (Schneider, 1980).

When intimate partner violence leads to homicide, women are again more likely than men to be the victims (Gannon, 2004). In some cases, however, battered women who have unsuccessfully sought help from the criminal justice system resort to lethal violence in a desperate act of self-help. According to Statistics Canada (Gannon, 2004), men are seven times as likely as women to have used violence first in the incidents in which they were killed. When battered women kill their abusers, they may claim that they were responding to threatened or actual violence by claiming self-defence or provocation. If their claims are accepted, they may be fully acquitted or held partially responsible. However, the law does not always recognize battered women's experiences of abuse and therefore does not always accept their claims of defence.

Feminists have sought increased equality in law for women and have, in the past few decades, managed to gain recognition of women's rights in general and the plight of battered women in particular. A major achievement in Canada was the Supreme Court of Canada's acceptance of expert evidence on the Battered Woman Syndrome in *R. v. Lavallee* (1990), confirming the first acquittal of a battered woman in the death of her abusive male partner. This decision came eleven years after expert testimony on the Battered Woman Syndrome was first accepted in the United States in *Ibn-Tamas v. U.S.* (1979), a case in which a woman reacted to an assault by her husband with deadly force.

2. The Battered Woman Syndrome (BWS)

The Battered Woman Syndrome, first identified by American psychologist Lenore Walker (1979), describes a set of psychological symptoms characteristic of women who have experienced repeated psychological and/or physical abuse at the hands of an intimate male partner. The syndrome emerged in Walker's (1979) research involving interviews with battered women, some of whom were still in violent relationships, some of whom had left their partners, and some of whom had killed their abusers. Walker defines a battered woman as "a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights" (1979, p. xv). Not all battered women are thought to be suffering from the Battered Woman Syndrome (Douglas, 1987) but those who are may experience more severe abuse more often (*R. v. Lavallee*, 1990).

The Battered Woman Syndrome integrates Walker's (1979) cycle theory of violence and Seligman's theory of learned helplessness (Peterson, Maier, & Seligman,

1993) to explain the pattern of violence in abusive relationship and the reasons battered women stay with their abusers.

2.1 The Cycle of Violence

Walker developed the cycle theory of violence in her first book, *The Battered Woman* (1979). Her theory outlines a common pattern in abusive relationships comprised of three stages: (1) the tension building stage, (2) the acute battering incident, and (3) the loving-contrition or 'honeymoon' stage. Throughout the first stage, tension builds between partners and the perpetrator commits isolated incidents of verbal, psychological, and relatively minor physical abuse. His partner often responds to his hostility by placating him in an attempt to keep the violence from escalating. On occasion, she may succeed in calming her abuser, which reinforces her belief that she can manage his behaviour (Walker, 2000). The woman may blame herself or external factors for the abuse as well as minimize the abuse because it was not as severe as it could have been (Walker, 1979).

The tension builds, leading to the second stage of the cycle of violence, the acute battering incident in which all the built-up tension is released in a violent attack (Walker, 1979). During this violent episode, the woman is the victim of a severe verbal and physical assault by her partner and may sustain physical injuries or require medical attention. In some cases, the woman may actually provoke this assault in order to effect some degree of control over the timing and location of the assault and better protect herself from injury (Walker, 2000). Batterers sometimes justify their behaviour by saying they simply intended to teach their partner a lesson. This period of severe violence is the

shortest of the three stages of the cycle and usually lasts less than a day although it can last up to a week in some cases (Walker, 1979). The main features of this stage are the lack of predictability and control (Walker, 1979).

Following the acute battering incident, the batterer typically displays affection toward his partner and promises never to be violent again. This third stage of the cycle, that of loving-contrition, is characterized by a lack of tension and violence, which reinforces the woman's hope that her partner will change and may convince her to stay in the relationship (Walker, 2000). Battered women often "choose to believe that the contrite behavior is more indicative of the real person than the battering behavior" (Walker, 1979, p. 68). This 'honeymoon' phase usually lasts longer than the acute battering stage but not longer than the tension-building phase.

Despite the abuser's promises to change, the loving-contrition phase usually ends and the cycle continues. Walker suggests that if the level of tension does not decrease following the acute battering incident, then the potential for homicide may be particularly high (Walker, 2000). It is as the first phase begins that women are most likely to respond to battering incidents, however minor, with deadly force, often in an attempt to stop the violence rather than with any intention of killing their partners (Walker, 1979). According to Walker (1979), a woman must go through the cycle of violence at least twice in order to be considered a battered woman. The time it takes to move through the cycle and the severity of violence in each cycle varies within and across couples (Walker, 1979). As the cycle continues, the period of time between acute battering incidents tends to decrease and the violence tends to escalate in severity with each incident (Walker, 2000). Although the final stage of the cycle of violence may reinforce battered women's

hope that their partners will change, it is the development of learned helplessness that paralyzes them from leaving their abusers.

Walker's cycle theory of violence has been validated in her more recent work, *The Battered Woman Syndrome* (2000). Of the approximately four hundred battered women interviewed, 65% reported a phase of tension-building prior to a battering incident and 58% reported a loving contrition phase following the incident. The results of this study also support the changing nature of the cycle of violence over time. Battered women reported an increase in tension-building before a battering episode and a decrease in the loving contrition phase following each incident as the abusive relationship developed over time.

2.2 Learned Helplessness and Traumatic Bonding

The theory of learned helpless emerged from Martin Seligman's work with animals in a laboratory. He found that when dogs were shocked at random intervals unrelated to their behavior, they became passive and failed to escape from their cages, even when given the opportunity. Walker (1979) realized that this phenomenon could be observed in battered women who receive beatings at various intervals unrelated to their own behaviour. She adopted the theory of learned helplessness, understood as "having lost the ability to predict that what you do will make a particular outcome occur" (Walker, 2000, p. 116), to the plight of battered women. With repeated abuse, battered women learn that they have no control over their partners' abusive behaviour, which affects their perceptions of escape and leaves them feeling trapped in violent relationships, "blind to their options" (Walker, 1979, p. 48). Walker (2000) suggests that:

> If a woman is to escape such a relationship, she must overcome the tendency to learned helplessness survival techniques – by, for example, becoming angry rather than depressed and self-blaming; active rather than passive; and more realistic about the likelihood of the relationship continuing on its aversive course rather than improving. (p. 118)

An alternative theory to account for why battered women remain in abusive relationships is that of 'traumatic bonding.' Traumatic bonding is said to occur in violent situations where there is a pronounced power differential but particularly when it is mixed with love (Jacobson & Gottman, 1998). Battered women become both fearful of their abusers and dependent on them, making it difficult to leave.

3. The Battered Woman Syndrome and Mental Disorder

The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR, APA, 2000) is one of the leading classification systems for disorders (the other system being the World Health Organization's *International Statistical Classification of Diseases and Related Health Problems,* ICD-10). Several categories and their associated criteria have been present in some editions of the manual and absent in others, reflecting its flexibility to a changing scientific and socio-political climate. Its adaptable nature has left it vulnerable to criticism that its categories are socially constructed and politically motivated.

Prior to Walker's (2000) study, battered women were typically thought to suffer from personality disorders. The term masochism was used interchangeably with learned helplessness to explain why a woman would remain in an abusive relationship (Walker, 2000). Walker emphasizes that masochism and learned helplessness are different constructs and she has criticized the notion of masochism as an "unacceptable concept in

feminist theory" (Walker, 2000, p. 102). Despite a lack of empirical evidence to support it, masochism was introduced into the DSM-III-R in the form of Masochistic Personality Disorder and later, as Self-defeating Personality Disorder (Walker, 2000). The research continued to show no evidence of this personality disorder which led to its exclusion from the DSM-IV.

The Battered Woman Syndrome is not a diagnosable mental disorder and does not appear by name in the DSM-IV. It is, however, situated under the rubric of Post-traumatic Stress Disorder (PTSD). Post-traumatic Stress Disorder describes a set of symptoms that develops in response to an extremely traumatic event, threatening or causing serious injury or death (DSM-IV-TR, 2000). Among these traumatic events is "violent personal attack" (DSM-IV-TR, 2000, p. 463) such as a sexual or physical assault. Domestic battering is also mentioned as one example of an interpersonal stressor (DSM-IV-TR, 2000). As Douglas articulates, "the post-traumatic stress disorder provides a standard diagnostic framework in which to understand some traumatic effects of the BWS" (1987, p. 41). Battered women who meet the diagnostic criteria for PTSD or any other mental disorders listed in the DSM-IV may require clinical intervention. However, being a battered woman in and of itself is not grounds for a clinical diagnosis or psychiatric intervention.

The Battered Woman Syndrome has received much criticism from social scientists and the feminist community alike. These challenges have been directed at Walker's cycle theory of violence, her application of learned helplessness, and her "labelling the situation of a battered woman as a syndrome" (Gold, 2003, p. 163). Because of the overlap in criticisms of the Battered Woman Syndrome and its use in

court, a broad critique of the syndrome and expert testimony on the subject will follow a review of relevant Canadian law and an introduction to expert testimony on the BWS.

4. Self-defence Law in Canada

Self-defence law in Canada exists so that anyone who is unlawfully attacked or threatened is not held criminally responsible for defending him/herself from serious injury or death. As outlined in section 34 of the Criminal Code of Canada (1985),

> (1) Every one who is unlawfully assaulted without having provoked the assault is justified in repelling force by force if the force he uses is not intended to cause death or grievous bodily harm and is no more than is necessary to enable him to defend himself.
> (2) Every one who is unlawfully assaulted and who causes death or grievous bodily harm in repelling the assault is justified if
> (a) he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purposes; and
> (b) he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm.

Self-defence law requires that a number of criteria be met. The accused must reasonably fear that she is at risk of death or grievous bodily harm. This criterion usually requires that the unlawful assault be imminent rather than the result of a previous or anticipated assault (Comack, 1993). Additionally, the force she uses must be proportionate to that used against her and no more than necessary to repel her assailant. Finally, she is expected to use force only as a last resort.

Canada's self-defence law has been criticized for being inconsistent and overly complex (Department of Justice, 1998; Ratushny, 1997) and for not providing enough guidance to judges in making decisions (Ratushny, 1997). The law's complexity stems from the fact that "there are different provisions for provoked and unprovoked attacks,

for intentional and unintentional use of deadly force, and for defence of oneself and defence of another person" (Department of Justice, 1998, §1). Apart from these general concerns, the criteria laid out in self-defence law have created challenges for battered women who kill their abusers because their situations differ from those upon which the law was originally conceived. Chan (1997) identifies this as a problem of sex discrimination in law, saying that "different experiences would make the application of one set of standards unjust since the standards of legal defences have been founded historically on the experiences of men" (p. 218). The following pages examine the four main aspects of self-defence law that create difficulties for battered women who kill their abusers: reasonableness, imminence, proportionality, and retreat.

4.1 Reasonableness

The first requirement that must be met in order to claim self-defence is the objective standard of reasonableness. However, there is no statutory definition of reasonableness in the Criminal Code of Canada, so the notion has had to be interpreted in case law for various situations (Department of Justice, 1998). Reasonableness may be assessed by an objective, subjective, or mixed inquiry. An objective inquiry assesses the defendant's perceptions and behaviour in comparison to how a reasonable person would have perceived and responded to the same situation (Department of Justice, 1998). A subjective inquiry, on the other hand, assesses the defendant's perceptions and behaviour in light of her knowledge, history, and personal characteristics related to the incident (Department of Justice, 1998). A mixed inquiry would assess the defendant's perceptions and behaviour against the standard of an ordinary reasonable man who shares the

defendant's history and basic characteristics (Department of Justice, 1998). A mixed subjective-objective approach ensures that people assess situations reasonably but allows for some understanding based on their particular circumstances (Department of Justice, 1998). This approach is favoured by the Canadian Association of Elizabeth Fry Societies (CAEFS, 2000) and Judge Lynn Ratushny, whose *Self Defence Review* (1997) will be examined below.

Reasonableness is assessed by the jury on the basis of their experiences and common sense and may incorporate any factors related to the defendant's perceptions and behaviour that are relevant to the claim of self-defence (Department of Justice, 1998). The defendant's stated belief that using deadly force was the only option available must be reasonable based on the notion of the ordinary reasonable man. This criterion clearly dismisses battered women's experiences because the situation she finds herself in is not that of an ordinary man. As Wilson J. (*R. v. Lavallee*, 1990) articulates, "if it strains credulity to imagine what the 'ordinary man' would do in the position of a battered spouse, it is probably because men do not typically find themselves in that situation" (¶ 38). She further insists that "the issue is not, however, what an outsider would have reasonably perceived but what the accused reasonably perceived, given her situation and her experience" (¶ 51). Battered women may have difficulty convincing a judge or jury that their assessment of the situation and response to it were reasonable (Schneider, 1980). Thus, feminists argue that the law must be modified to recognize battered women's unique situations.

The danger of modifying this requirement is that a test may develop based on the ordinary battered woman. This could lead to a situation where women had to prove that

they fit within a specific framework such as that of the Battered Woman Syndrome in order to be deemed 'reasonable' compared to other battered women instead of compared to other women in general.

4.2 Imminence

Imminence is related to the notion of reasonableness and sometimes thought to be a measure of it; that is, did the defendant reasonably believe that she must kill or be killed herself? Wilson J. (*R. v. Lavallee,* 1990) notes that although a requirement of imminence is not explicitly stated in the law, it has been read into the defence. The criterion of imminence is based on a single violent attack between two men who are strangers and it takes into consideration only the events immediately before the defensive act (Schneider, 1980). The notion of imminent danger ignores the reality of battered women who have suffered repeated violence from their partners and reasonably expect to experience violence from them in the future. The problem is that "if there is a significant time interval between the original unlawful assault and the accused's response, one tends to suspect that the accused was motivated by revenge rather than self-defense" (*R. v. Lavallee*, 1990).

A narrow reading of the law may mean that a defendant's claim to self-defence is only valid if she acts in the heat of an attack, thereby limiting the availability of self-defence law to battered women who kill their partners outside of an acute battering incident (CAEFS, 2000). For battered women who kill their abusers, it is often the case that they kill during the first phase of the cycle of violence, long after a violent episode or while the abuser is asleep or passed out (Walker, 1979). Thyfault, Browne, and Walker

(1987) note that "this extension of time has been particularly important, as battered women become familiar with their mates' patterns of violence and sometimes kill just before the violence escalates to more dangerous proportions" (p. 74). When battered women kill their sleeping or unconscious partners, it may be because they believe they lack the strength to fight back while their partners are attacking them but are able to do so when these men are in a more passive state (Schneider, 1980). Alternatively, they may fear that upon awakening or gaining consciousness their abusers will act on their previous threats to further harm or kill them (Schneider, 1980).

Battered women are believed to have an intimate knowledge of their partners' behaviour and to be more sensitive to subtle changes in his words and actions that make his threats more frightening (Department of Justice, 1998). A stranger or ordinary person, on the other hand, would not be as sensitive to these subtle cues or changes in behaviour. Kazan (1997) questions this alleged sensitivity and suggests that it may make battered women hypersensitive to their partners' behaviour such that any deviations from his behavioural patterns may be misinterpreted as life-threatening. Many battered women who kill their abusers say they believed the risk posed to them during the final assault was more serious than in previous episodes (Schneider, 1980; Walker, 1979; Walker, 2000). Wilson J. (*R. v. Lavallee,* 1990) notes that "they can say what made the final episode of violence different from the others: they can name the features of the last battering that enabled them to know that this episode would result in life-threatening action by the abuser" (¶ 48). It is important that the jury understand why the defendant perceived the circumstances to be life-threatening in comparison to the ordinary person who had no intimate relationship with their attacker (Schneider, 1980).

4.3 Proportionality

Another criterion in self-defence law is that the force used by the defendant against his or her attacker must be proportionate to the force used against the defendant in the first place. This means "it is permissible to use deadly force to defend oneself against deadly force" (Kazan, 1997, p. 567). Clearly, this requirement poses problems for battered women who kill their abusers outside of a violent episode.

Self-defence law was built on an assumption that the attacker and the attacked are of approximately equal size and strength (Thyfault, Browne, et al., 1987). Battered women struggle to fit within this framework because they tend to be smaller in size than their male partners and in order to compensate for their physical disadvantage, they tend to use weapons when defending themselves (Chan, 1994; Schneider, 1980). Between 1993 and 2002, male victims of intimate partner homicide were killed with a weapon more often than female victims. Men were shot or stabbed 85% of the time and strangled or beaten to death 10% of the time; women, on the other hand, were shot or stabbed 62% of the time and strangled or beaten 33% of the time (Gannon, 2004). These statistics show that women rarely rely on their own physical strength in killing their intimate partners whereas men commonly do.

Gender discrimination occurs with regard to proportionality because a woman is unlikely to be able to kill her partner without a weapon whereas a man is generally stronger than a woman and can kill her without a weapon (Schneider, 1980). The force of a weapon is more than that of bare hands and is more likely to be seen as unreasonable or as premeditated murder or revenge, making battered women's claims to self-defence

invalid (Chan, 1994; Schneider, 1980). Even if they are able to claim self-defence, firearms legislation enacted in 1995 (Bill C-68) means they will be required to serve a minimum of four years of their sentence in prison for committing homicide using firearms (Sheehy, 2001).

4.4 Retreat

Self-defence law assumes that the accused exerted deadly force only as a last resort. That is, there is a duty to retreat and only when retreat is not possible is lethal action justified. Although, in Canada, there is no legal duty to retreat before resorting to violence, the notion has been read into the law and defendants are expected to have explored their escape options before resorting to violence (Kazan, 1997). This criterion for self-defence was not created with the battered woman's circumstances in mind but rather for situations where men who are strangers find themselves in a confrontation. Duty to retreat is particularly complicated for battered women who kill because they are often assaulted in their homes and thus would be required to retreat from their homes where they are supposed to feel safe (Chan, 1994). As well, if a battered woman feels trapped in an abusive relationship, she may have tried and failed to leave several times in the past and now believes that escape is impossible (Department of Justice, 1998).

There are a host of reasons why retreat might be difficult, if not impossible, for battered women. They may not have access to transportation, they may not have access to safe places such as shelters, or they may not have the financial resources to live outside of the abuser's home, particularly when their partners have been financially abusive (CAEFS, 2000). Battered women may not be able to rely on friends or family because

their abusers have isolated them from support people and may threaten these people should they assist the battered woman (Schneider, 1980). The lack of alternative accommodation may be particularly problematic for women who live in small cities or in rural locations where shelters are distant or inaccessible (CAEFS, 2000; Chan, 1994). Even if there are shelters for abused women and children in the area, they may have difficulty securing residence due to disability or long waiting lists (CAEFS, 2000; Kazan, 1997). Battered women may not want to leave their children with their partners, particularly while these men are angry and pose a threat to the children (Schneider, 1980). Another well-documented reason that battered women do not retreat is that they are at an increased risk of violence and death during or after separation from their spouses (CAEFS, 2000; Chan, 1994; Kazan, 1997; Wilson & Daly, 1993). All of these factors affect battered women's perceptions of alternatives and limit their escape options. Wilson J. addressed the issue of duty to retreat in *R. v. Lavallee* (1990), saying, "It is not for the jury to pass judgment on the fact that an accused battered woman stayed in the relationship. Still less is it entitled to conclude that she forfeited her right to self-defence for having done so" (¶ 58).

In addition to the challenges battered women face in meeting the criteria of reasonableness, imminence, proportionality, and retreat, there are numerous other problems related to claiming self-defence. One important factor is that, because a murder conviction carries with it a mandatory life sentence with a parole ineligibility period of 10 to 25 years, women are unlikely to risk pleading self-defence even if there is a chance they will be acquitted (Frigon & Viau, 2000). This choice (or lack thereof) may revolve around numerous factors including having "an enormous lack of legal, social, and

economic support for their defence" (CAEFS, 2000, §A2), facing the fear of life imprisonment, enduring the humiliation or trauma of testifying publicly about the abuse they have suffered, and believing that they should be punished (Ratushny, 1997; Sheehy, 2001). Additionally, many battered women are mothers with primary or sole custody of their children and they fear losing their children should their claim to self-defence fail (CAEFS, 2000; Ratushny, 1997; Sheehy, 2001). All of these factors contribute to the systemic disadvantage women face in claiming self-defence to murder charges (CAEFS, 2000). As a result, battered women who kill may be more likely to enter a plea bargain and plead guilty to a lesser charge such as manslaughter or rely on partial defences such as provocation.

5. Alternatives to Self-defence Law

The limitations of self-defence law for battered women have led to an exploration of alternative defences, such as provocation, self-preservation, and psychological self-defence, that may ensure legal equality for women who kill their abusers. Provocation laws are more readily applied to battered women who kill than self-defence laws in many global jurisdictions. Australia is particularly likely to rely on provocation instead of self-defence for cases of female-perpetrated intimate partner homicide. In England, provocation reduces a murder charge to one of manslaughter and allows for more discretion in sentencing (Chan, 1994). Like self-defence law, provocation creates many challenges for battered women who kill their abusers. In particular, the greater the timeframe between the provoking attack and the response, the more likely it is to be perceived as an act of revenge rather than a response to provocation (Chan, 1994).

Battered women are often required to rely on provocation when their claims to self-defence are denied because they used excessive force in repelling their assailants. While the law of provocation has allowed some battered women to avoid convictions of murder, Chan (1994) encourages an emphasis on self-defence rather than provocation because it is a complete rather than a partial defence. If only provocation defences are available to battered women who kill then they are, in essence, forced to accept partial responsibility for their own victimization. CAEFS (2000) would like to see the abolition of provocation law in Canada but only if it is accompanied by the abolition of mandatory minimum sentences.

An alternative to the strict requirements of provocation law is to introduce the notion of 'cumulative provocation' for battered women who kill. That is, provocation would not necessarily be limited to a single, life-threatening incident but could be applied to situations where a history of provoking incidents led to a lethal response (Chan, 1997). In broadening provocation law, the notion of 'cumulative provocation' is preferable to extending the time delay between a provocative incident and a lethal response because it reduces the likelihood of using the defence to justify revenge killing (Chan, 1997). It does, however, account for the lethal self-help of women whose actions result from a 'slow burn' rather than a "sudden and temporary loss of control" (Department of Justice, 1998) following a single, isolated incident (Gatowski, Dobbin, Richardson, & Ginsburg, 1997).

Another proposed defence to replace self-defence for women accused of killing their abusive intimate partners is self-preservation. Like provocation, self-preservation is suggested as a partial defence for anyone who kills a partner after suffering physical and

psychological abuse (Chan, 1997). Ewing (1990) has proposed a psychological self-defence that he suggests results from a "gross and enduring impairment of one's psychological functioning that significantly limits the meaning and value of one's physical existence" (p. 587). Research assessing the impact of this proposed psychological self-defence in cases of battered women who kill has shown that mock juries are more likely to acquit a defendant who pleads psychological self-defence (Greenwald, Tomkins, Kenning, & Zavodny, 1990), especially when given the choice between psychological and traditional self-defence (Kasian, Spanos, Terrance, & Peebles, 1993). Regardless of which defence is used to justify battered women's lethal responses to intimate partner violence, expert testimony is often admitted in court to substantiate their claims.

6. Expert Testimony on the Battered Woman Syndrome

Expert testimony has only recently been applied to the defence of battered women who kill (Thyfault, Bennett, & Hirschhorn, 1987) and tends to revolve around the Battered Woman Syndrome. The Battered Woman Syndrome is not a legal defence but is used to substantiate claims to existing defences such as self-defence and provocation. Before expert evidence is admitted into the trial process, it must meet a strict set of criteria. Wilson J., in her judgment of *R. v. Lavallee* (1990), listed the principles that need to be met in Canada before expert testimony can be admitted to court: The evidence presented must be beyond the ken of the average juror or lay person, the knowledge provided must dispel myths regarding battered women and assist fact-finders in making

appropriate decisions, and the testimony may explain why the defendant stayed in the relationship and why her perceptions and response were reasonable.

While the acceptance of expert testimony on the Battered Woman Syndrome has been slow in England (Chan, 1997), other jurisdictions around the world, especially in Australia, have followed the lead of Canada and the United States in its admission. Countries that have been resistant to the use of expert testimony on the BWS have found alternative ways to deal with battered women who kill. England, for example, has emphasized women's mental state and the notion of diminished responsibility in an attempt to provide justice to battered women (Gatowski et al., 1997).

If the judge or jury does not appreciate the plight of the battered woman on trial, she may not be judged according to her unique experience. Thus, expert witnesses must not only be more knowledgeable than the average lay person but must also be perceived as credible. In cases of battered women who kill, expert witnesses tend to be psychologists or psychiatrists (i.e., 'psy' professionals, Frigon, 1996). Because of their academic and professional positions, these professionals may be perceived as more credible than other individuals who work with battered women, such as shelter staff.

The purpose of expert testimony on the Battered Woman Syndrome is to explain how battered women who kill might meet the requirements of the law, though perhaps not in the strictest interpretation. Experts may argue "that the woman was within the definition of a 'battered' woman; that she exhibited behavior patterns found to be typical of other abused women; and that it was reasonable, based on the battering history, for her to have been in fear of bodily harm or death when she killed her mate" (Thyfault, Browne, et al., 1987, p. 74). Expert testimony on the BWS also helps explain the reasons

so many battered women stay in abusive relationships. The notion of learned helplessness, in particular, may assist the judge or jury in understanding why a battered woman perceived killing her abuser as the only option available to her. "If it can be proved that the psychological bond between the defendant and her batterer was equivalent to being physically restrained, acquittal on the basis of self-defense can be justified" (Walker, 1979, p. 221). Additionally, the Battered Woman Syndrome may help justify the temporal distance between the batterer's threats or violence and the woman's lethal response (Faigman, 1986).

Another important function of expert testimony on the Battered Woman Syndrome is to dispel misconceptions about battered women and to assist the judge and/or jury in understanding the reasonableness of the defendant's perceptions and actions (Downs, 1996; Kazan, 1997). Expert witnesses can provide an alternative framework within which the judge or jury can interpret other evidence presented in trial. Since the battered women's movement, increased awareness of intimate partner violence has shed some light on the reality of violent relationships. However, because most members of the public continue to hold misconceptions about battering relationships and battered women (Ewing, & Aubrey, 1987), such misconceptions must be dispelled in court to ensure that the judge and/or jury can appreciate the defendant's experiential reality. Some commonly held misconceptions are that battered women deserve or enjoy the abuse, that they suffer from psychological disorders (Walker, 1979), that it is easy for them to leave violent relationships, and that the criminal justice system adequately protects them (Chan, 1994; Schneider, 1980). "Far from protecting women from it the

law historically sanctioned the abuse of women within marriage..." (*R. v. Lavallee*, 1990).

The criminal justice system's response to intimate partner violence has improved drastically over the past 20 years. For example, in 1983, the Canadian government encouraged the adoption of mandatory charging (pro-charging) policies (Ad Hoc Federal/Provincial/Territorial Working Group, 2003; Patterson, 2003). These policies were intended to remove responsibility for laying charges from battered women, increase reporting and charging rates in cases of intimate partner violence, and reduce the risk of future violence (Ad Hoc Federal/Provincial/Territorial Working Group, 2003). Most jurisdictions in Canada have now implemented mandatory charging policies, demonstrating that the criminal justice system is committed to improving its response to intimate partner violence and treating it as a serious criminal offense rather than a private matter.

Unfortunately, despite such positive developments, the criminal justice system often still does not provide battered women with the protection they need. Restraining orders, for example, may be issued but are unlikely to protect a woman because they are merely pieces of paper that the police cannot act upon until often it is too late and the abuser has violated the conditions of the order. With regard to intimate partner violence, restraining orders have even been described as a 'license to kill' as they may threaten a woman's abuser and increase the risk of lethal violence against her (Chan, 1997). National data on the prevalence and effectiveness of protection orders in cases of intimate partner violence will be available for the first time in the *Family Violence in Canada: A Statistical Profile 2005* (Brzozowski, 2004). Kim Pate (1994) notes that "it should come

as little surprise that when [battered women's] calls for help are not responded to, some women resort to drastic measures in order to escape their desperate circumstances and achieve some degree of personal safety" (p. ¶ 31).

It is difficult to assess the impact of expert testimony about the Battered Woman Syndrome in court. However, controlled experiments have revealed much about the effectiveness of claims about the Battered Woman Syndrome in court by examining the decision-making of mock jurors. One study of a hypothetical case suggested that mock jurors perceive battered women who kill more favourably when exposed to expert testimony on the BWS (Schuller, Smith, & Olson, 1994). Women were more reluctant to convict the defendant in the expert condition (i.e., when an expert gave evidence on the Battered Woman Syndrome) versus the no-expert condition. Jurors are also more likely to acquit the defendant or convict her of manslaughter (rather than murder) when exposed to expert testimony, particularly when the expert provides an opinion about whether or not the defendant fits the syndrome criteria (Schuller, 1992). A study conducted by Schuller and Cripps (1998) found that mock jurors were more likely to acquit the hypothetical defendant when a woman expert testified on the Battered Woman Syndrome and when the evidence was presented early in the trial proceedings. These results support the notion that expert testimony on the Battered Woman Syndrome provides jurors with an alternative framework within which to interpret subsequent evidence.

One study (Schuller, 1992) investigated both individual juror and deliberating jury decisions and perceptions in three conditions: no expert, general expert (i.e., the expert gave no opinion about whether or not the defendant exhibited symptoms of the syndrome), and specific expert (i.e., the expert gave an opinion about whether or not

defendant fit the syndrome). Individual jurors were found to be much more likely to acquit the defendant or convict her of manslaughter (instead of murder) when exposed to expert testimony. In the specific expert condition, very few jurors convicted the defendant of murder; most acquitted her on the grounds of self-defence. Although these findings shed light on individual juror perceptions and decisions, they reveal little about jury deliberation. Thus, jurors were grouped to form mock juries in order to assess the impact of expert testimony on the jury deliberation process. These mock juries were found to be much more likely to convict the defendant of second-degree murder in the no-expert condition and to convict her of manslaughter in the expert conditions. All three conditions, however, resulted in the same number of acquittals. These findings suggest that expert testimony on the Battered Woman Syndrome is more effective in reducing a conviction from murder to manslaughter than in acquitting the defendant (Schuller, 1992).

7. Critique of the Battered Woman Syndrome and its Use in Court

The Battered Woman Syndrome and its use in court to support claims of self-defence has proved to be something of a double-edged sword (Shaffer, 1997). The admissibility of expert evidence on the syndrome has, in many ways, been advantageous for women who kill their abusive intimate partners. However, despite its apparent benefits, there are a number of dangers associated with relying on this construct. There is now a significant body of literature critiquing the Battered Woman Syndrome itself and the introduction of expert testimony on the syndrome in cases of self-defence.

Walker's research on intimate partner violence and homicide, as well as her development of the Battered Woman Syndrome have met with much criticism. Gold (2003), for example, claims that Walker's research is bad science while others have referred to it as "pseudo-science or junk science" (Lederman, 2002, p. 1). Lederman (2002) recognizes the BWS not as bad science but rather as soft science; that is, the evidence "tends to be used to construct a social framework or background for a case, or to dispel longstanding myths about human behaviour" (p. 6). Walker (1989) agrees that the purpose of expert testimony on the Battered Woman Syndrome is just that: to "[teach] the jury how to interpret the evidence as would an expert in this field" (p. 312). In addition to concerns about her adherence to the scientific method, critics have expressed reservations about the extent to which her findings can be generalized to all battered women. This criticism comes from Walker's study sample, which was composed largely of white middle- and upper-class victims who were not randomly selected (Chan, 1997).

Faigman (1986), a critic of Walker's research, suggests that the validity of the Battered Woman Syndrome has not been adequately questioned in the literature or in court. He expresses concern that Walker conducted her research as an advocate rather than as an objective investigator and cautions against advocacy in court carried out by sympathetic feminist researchers and expert witnesses. It is, therefore, critical for researchers to recognize their own biases before conducting research and presenting their findings. Indeed, Walker stated her biases explicitly in *The Battered Woman* (1979).

Faigman (1986) identifies five major methodological limitations of Walker's cycle theory of violence. First, he accuses the interviewers of asking leading questions and failing to properly disguise their hypotheses. Second, he argues that evidence of the

cycle of violence came from the interviewers' evaluations of what battered women said rather than from directly the participants' responses. Third, Walker does not identify a timeframe within which the stages of the cycle of violence occur; that is, there is no indication of the time it takes for each stage to occur. Fourth, he criticizes Walker's failure to empirically link the experience of terror to any particular stage of the cycle of violence. Finally, Faigman argues that the data do not clearly support a three-phase cycle of violence. He questions the extent to which the battered women in the study experienced all of the stages of the cycle and in the order suggested by Walker's theory.

Additionally, Faigman suggests that Walker's application of the cycle theory of violence to self-defence cases does little to help fact finders understand the woman's perception of imminent, life-threatening injuries (Faigman, 1986). Her lack of a control group comprising women who have never been in an abusive relationship leaves her results open to criticism. This notion is particularly important because the Battered Woman Syndrome is used in court to support the reasonableness of the woman's perceptions and behavior as compared to that of the ordinary person. Without data on the ordinary person (i.e., women not in abusive relationships), there is no comparison or standard available to compare the reasonableness of the defendant's behavior. Also, because Walker made no comparisons between participants who did not kill their abusers and those who did, her research does not explain why a woman would believe she had to kill her abuser to end the violence (Faigman, 1986). Chan (1997) suggests that jurors' tendency toward lenience is based more on sympathy for the woman and anger towards the abuser's behavior than on an accurate measure of the defendant's perceptions of

lethal threat. Legal decisions based on sympathy rather than legal rules are more likely to vary (Chan, 1997) and reduce the public's faith in the criminal justice system.

Critics of the Battered Woman Syndrome question Walker's application of learned helplessness to battered women. The main problem with this application is that it does not logically follow that a helpless victim would be able to kill her abuser, a clearly active form of self-help (Kazan, 1997). Even Walker (2000) herself notes that, although her findings support the use of learned helplessness to explain battered women's perceptions and behaviours, the application of this theory to battered women still requires support from tests in laboratory settings. Criticism with regards to the application of learned helplessness has also come from feminists who equated the notion of learned helplessness with being helpless (Walker, 2000). The problem, Walker suggests, was that feminists "were reacting to the name that contained the word 'helplessness,' a concept that advocates were working very hard to deconstruct from the image of a battered woman" (Walker, 2000, p. 116-117). In other words, it was the label rather than the theory itself that fueled resistance to its application to battered women. Other researchers have misinterpreted the notion of learned helplessness as it relates to battered women. Kazan (1997), for example, uses learned helplessness to suggest that the BWS is in fact a mental disorder and that women who suffer from the syndrome are 'psychologically impaired,' evident in their inability to perceive alternatives to "continued participation in an abusive relationship" (p. 561) or to take action.

Feminists have expressed concern that expert testimony on the Battered Woman Syndrome focuses too much on the woman's helplessness or dependency rather than on her partner's violence (Sheehy, 2001). The Battered Woman Syndrome may also be

misinterpreted by the courts, such that misconceptions and stereotypes about battered women are reinforced instead of obliterated (Chan, 1997). In fact, some have argued that *any* individualization or recognition of gender differences in law may perpetuate negative stereotypes of women from which gender discrimination originates (Schneider, 1980). The possible reinforcement of stereotypes that battered women are passive and helpless is not only not in their best interests but also leads expert witnesses to engage in a discourse they are called upon to challenge (Chan, 1997).

Advocates of the rights of battered women are clearly faced with a dilemma: individualization in law is necessary for equal treatment of battered women claiming self-defence but also threatens to create a single and narrow stereotype of battered women (Schneider, 1980): the 'bona fide' battered woman (Chan, 1997). This may lead to the development of a 'reasonable battered woman standard' to replace that of the 'reasonable man' (Chan, 1997). The standard could then require battered women who claim self-defence to prove that they suffer from the Battered Woman Syndrome as described by Walker (Chan, 1997). There is also a concern that it will open the door to other individualized standards of reasonableness such as the "'reasonable mentally handicapped person' and the 'reasonable psychotic'" (Kazan, 1997, p. 563). Despite these dangers associated with individualization in law, Schneider (1980) strongly believes that it is essential in order to eliminate gender discrimination in the criminal justice system.

While the concept is introduced in cases of self-defence to explain the reasonableness of a battered woman's perceptions and beliefs, it has the potential instead to portray her as irrational and unreasonable (Chan, 1997; Sheehy, 2001). Comack (1993)

argues that battered women claiming self-defence are bound to be negatively labelled regardless of the outcome of their trials. For example, if a woman is acquitted with the help of testimony on the Battered Woman Syndrome, she may be seen as mentally unstable or 'mad' but if her claim to self-defence fails and she is convicted, she is considered criminal or 'bad' (Comack, 1993). Battered women who kill seem destined to fall into one category of this negative dichotomy or the other and critics of the Battered Woman Syndrome suggest that this construct may be partially responsible.

Prior to the case of *R. v. Lavallee* (1990), women in Canada convicted for killing their intimate partners "who had any prior criminal records or had lived anything but pristine lifestyles (i.e. that of the good wife, good mother, compliant woman) tended to consequently have their past histories dredged up and used against them" (Pate, 1994, ¶ 8). Even today, "women who have resorted to lethal self-help, but do not fit the stereotypic psychological profile of a woman suffering from the 'syndrome', tend to be judged more harshly than those who do fit the 'syndrome' analysis" (Pate, 1994, ¶ 10). A victimization-criminalization dichotomy exists such that society cannot appreciate cases where women may in fact fit into both categories; that is, "battered women's victimization [is emphasized] at the expense of their agency" (Kazan, 1997, p. 573). According to Pate (1994), women who have violent or criminal histories themselves or are members of marginalized groups (e.g., visible minority women, lesbian women, women who work in the sex trade; CAEFS, 2000) are less likely to be viewed as genuine battered women and thus are less likely to risk making claims that they acted in self-defence.

Another problem is that the use of expert testimony on the Battered Woman Syndrome shifts the focus from men's violence as a social problem to women's individual responses to this violence (Sheehy, 2001). The assumption that the information presented by experts is beyond the ken of the jurors suggests that intimate partner violence is a rare occurrence and fails to recognize the high incidence of violence in relationships. It also suggests that despite the high incidence of intimate partner violence, most of this type of violence is not so serious to warrant violent responses from battered women. Frigon (1996) addressed this problem with relation to the case of *R. v. Lavallee* (1990) in which the use of the Battered Woman Syndrome "reconstructed the homicide as [the result of] a psychological disorder in opposition to wider social issues such as gender inequality and power differentials in intimate relationships" (p. 96). This may lead to the problem of the medicalization of battered women who kill.

Feminists have raised concerns about using the Battered Woman Syndrome to explain battered women's perceptions and behaviors in abusive relationships. Although the BWS is not a mental disorder, it may be interpreted as such in court and medicalize or pathologize the battered woman on trial (Chan, 1997; Frigon, 1996; Kazan, 1997). Even Walker herself recognizes the potential for the Battered Woman Syndrome to pathologize battered women but suggests that, especially when linked to Post-traumatic Stress Disorder, it is the best concept available to diagnose battered women (Walker, 2000).

The construction of a battered woman's experiences as a 'syndrome' may serve to identify her as psychologically disturbed. Related to this notion is the fact that, because an expert is called on to testify on behalf of the woman, she is pathologized and therefore not seen as a reliable or credible witness (Sheehy, 2001). She requires an 'expert' to

support her claims of violence and legal defence. In some cases, battered women on trial for killing their abusers do not testify. Their experiences and voices are instead relayed to the fact-finders through an expert witness in "psychiatric or legal language" (Frigon, 1996, p. 96). Not only are women's experiences reconstructed to fit medical or psychiatric discourses but the fact that expert witnesses on the Battered Woman Syndrome are usually psychiatrists or psychologists reinforces the notion that these women are disordered (Frigon, 1996). In order to avoid syndromizing battered women on trial, their claims to self-defence must be rooted in their own experiences (Sheehy, 2001).

While some people question certain aspects of the Battered Woman Syndrome and its use in court, others reject the theory entirely. Kazan (1997) argues that although expert testimony may be crucial to substantiate battered women's claims of self-defence, it should emphasize the violent nature of the defendant's relationship and the socio-economic factors that limit battered women's options rather than relying on the psychological construct of the BWS. She maintains that many battered women's experiences do fit within the confines of self-defence law and that a reliance on the Battered Woman Syndrome may be "both unnecessary and inappropriate" (Kazan, 1997, p. 565).

Those who express caution in introducing the Battered Woman Syndrome in court have suggested that it stretches self-defence law too far (Faigman, 1986). Some fear that it will provide women with an 'excuse' for killing their intimate partners. Wilson J. addresses this concern in her judgment in *R. v. Lavallee* (1990): "Obviously the fact that the appellant was a battered woman does not entitle her to an acquittal... The focus is not on who the woman is, but on what she did" (¶ 62). Since the Supreme Court of Canada's

decision in *R. v. Lavallee* (1990), few women have claimed self-defence and been acquitted of charges for killing their abusive partners (Frigon, 2003; Sheehy, 2000; White-Mair, 2000). The decision has, instead, led to more women pleading guilty to manslaughter and receiving non-custodial sentences or short prison terms (Sheehy, 2001). The danger remains, however, that if expert evidence on the BWS is applied too loosely to cases that do not justify its use, it might lose its integrity (Gatwoski, Dobbin, Richardson, & Ginsburg, 1997).

8. *R. v. Lavallee* and its Significance

The first Canadian case to admit expert testimony on the Battered Woman Syndrome was that of Lyn Angelique Lavallee, who was charged with second-degree murder in the death of her common-law husband. In 1987, she was tried and acquitted on a claim of self-defence due to evidence that she suffered from the Battered Woman Syndrome. The Manitoba Court of Appeal reversed the decision and, in 1990, the case went to the Supreme Court of Canada where Lavallee was acquitted in a landmark decision. This decision was influenced considerably by research and case law from the United States as a result of what Gatowski et al. (1997) refer to as 'the globalization of behavioral science evidence,' particularly the Battered Woman Syndrome.

The primary issue upon which the appeal to the Supreme Court of Canada was based was the admissibility of expert testimony on the Battered Woman Syndrome. A secondary issue, assuming the testimony was deemed admissible, was the judge's instructions to the jury regarding this testimony. Dr. Fred Shane, a psychiatrist with experience treating battered women, gave testimony on the BWS for the defence. Dr.

Shane's testimony clearly suggests that Lavallee suffered from the Battered Woman Syndrome.

Expert evidence on the Battered Woman Syndrome was crucial to this case; however, Sheehy (2000) notes that "the significance of *Lavallee* lies not in the recognition of BWS as a syndrome but rather in the use of a battered woman's experience of battering to inform the objective test for self-defence of her perception of the need for self-defensive violence and its degree" (p. 211). The Supreme Court of Canada's decision acknowledged the existence of a 'reasonable woman' that is different from the traditional legal notion of the 'reasonable man' or 'reasonable person' (Sheehy, 2000). The case also confirmed that assessing the reasonableness of a defendant's perceptions of grievous bodily harm or death must be both objective and subjective (Department of Justice, 1998). That is, when judging the validity of a claim to self-defence, the nature of the relationship between the victim and the accused must be considered in assessing whether her perception of the situation and her response were reasonable (Ratushny, 1997).

Although *R. v. Lavallee* (1990) represented a "feminist victory" (Frigon, 1996, p. 96), battered women's advocacy groups continue to fight for legal recognition of battered women's plight. The Canadian Association of Elizabeth Fry Societies (CAEFS), a national association dedicated to advocacy, research, and law reform in the interests of women involved in the criminal justice system, has been a particularly strong voice, lobbying the government to introduce a defence "that defines as 'the problem', the man's abuse, rather than the woman's response" (Pate, 1994, ¶ 4). Following the case of *R. v. Lavallee* (1990), CAEFS Executive Director, Kim Pate, approached several successive Ministers of Justice in Canada, demanding an *en bloc* review of all cases in which women

were imprisoned for killing an intimate partner. CAEFS was requesting an *en bloc* review because "existing processes of review are inadequate because their focus on discreet [sic] cases problematizes the behaviour of individual women rather than the social problem of abusive male partners" (Pate, 1994, ¶ 20). The government eventually took action and commissioned Judge Lynn Ratushny to review cases of women serving sentences for killing in response to a threat of serious bodily harm or death, and to make recommendations regarding self-defence law in Canada. Her final report, entitled the *Self Defence Review,* was submitted to the Minister of Justice and the Solicitor General of Canada in July 1997.

Judge Ratushny reviewed 98 cases (35 pre-*Lavallee* and 56 post-*Lavallee*) and made recommendations for relief in seven cases (4 pre-*Lavallee* and 3 post-*Lavallee*). She assessed cases prior to *R. v. Lavallee* (1990) because those women did not have the opportunity to claim self-defence and provide expert evidence on the Battered Woman Syndrome prior to 1990. She considered cases after *R. v. Lavallee* (1990) for various reasons including: self-defence was not raised as a defence; it was not explored adequately in trial; or it was not successful (Ratushny, 1997). Since the government has not provided relief for all seven of Ratushny's recommendations (Sheehy, 2000), the impact of the *Self Defence Review* may lie in its potential for law reform rather than its effect on the lives of the women for whom it sought justice.

In the *Self Defence Review,* Ratushny made recommendations for law, police and prosecutorial practices, as well as sentencing decisions (Sheehy, 2000). With regard to Canada's self-defence law, she called for a reformed law that is comprehensive and simple, and in which both subjective and objective elements are included and clearly

identified (Ratushny, 1997). CAEFS (2000), however, cautions against the use of a single provision for all cases of self-defence because it may in fact stifle equality under the law.

Since Judge Ratushny's *Self Defence Review* and the Department of Justice's (1998) *Reforming Criminal Code Defences: Provocation, Self-Defence and Defence of Property,* CAEFS' has published its own recommendations regarding self-defence law in Canada. In its *Response to the Department of Justice re: Reforming Criminal Code Defences: Provocation, Self-Defence and Defence of Property* (2000), CAEFS advocates for the abolition of mandatory minimum life sentences, parole ineligibility rules for murder, and the defence of provocation. It also calls for the reform of self-defence law to promote equality by simplifying the defence, expanding it to the protection of others and to offences other than homicide, and removing the requirement of proportionality in favour of reasonableness.

9. Conclusions

The need for recognition of battered women's experiences in law is evident from the large number of women affected by intimate partner violence and the criminal justice system's inadequate response to it. When battered women kill their abusers, they face numerous difficulties in justifying their actions using self-defence law. These challenges have led to the introduction of expert testimony on the Battered Woman Syndrome to explain the circumstances under which they killed and to dispel common misconceptions about battered women. Despite its potential benefits, many researchers and feminists have criticized the Battered Woman Syndrome for being based on methodologically flawed research, for emphasizing women's helplessness rather than men's violence, and

for medicalizing women's experiences of abuse. Some have called for major reform of self-defence law whereas others suggest relying on alternative defences, such as provocation, for battered women who kill. In light of similar cases of female-perpetrated intimate partner homicide, this research will examine claims-making about the Battered Woman Syndrome in court and in the news media in the case of *R. v. Getkate* (1998), a battered woman who killed her abusive partner.

CHAPTER II

THE SOCIAL CONSTRUCTIONIST PERSPECTIVE

This chapter introduces the social constructionist perspective, a theoretical approach adopted by researchers who seek to challenge traditional objectivist views and understand the construction of social problems through claims-making activities. This research focuses on intimate partner violence and homicide as social problems and examines the construction of the Battered Woman Syndrome through claims-making in expert testimony and news reporting. First, I introduce social constructionism and claims-making. Then, I review the use of expert testimony in court to make claims about scientific evidence in general and the Battered Woman Syndrome in particular. Finally, I discuss claims-making about intimate partner violence and homicide in the media. In addition, I specify the research questions and hypotheses for this study on claims-making in court and in the news media.

1. Social Constructionism and Claims-making

The social constructionist perspective suggests that it is useful, for analytic purposes, to temporarily suspend the view of members of society that social problems are objectively real. Instead, the view is taken that social problems are "constructed through social activities" (Best, 1989a, p. xviii). A central component of the social constructionist perspective is claims-making, as social conditions are not necessarily problematic until someone defines them as such (Best, 1989a). This claims-making activity, not the

putative social conditions themselves, is in fact the proper subject of analysis, according to the social constructionist perspective.

Social constructionists are also interested in claims-makers, especially those who claim to be experts on particular issues, and the various audiences to which claims are addressed. Primary claims-makers include professionals, often experts in their fields, who have vested interests and who make claims about particular social problems. Claims that are delivered using medical or scientific language are "almost beyond questioning or criticism" (Best, 2003b, p. 312). Thus, medical experts are particularly important claims-makers because their claims carry more weight than those made by advocates lacking similar credentials (Best, 2003b). Even within a discipline such as psychiatry, some claims-makers are regarded as more credible than others based on factors such as reputation and institutional affiliation.

Claims-makers construct social problems through the process of typification. They name and use vivid examples to draw attention to certain conditions in order to construct them as social problems. "They emphasize some aspects and not others, they promote specific orientations, and they focus on particular causes and advocate particular solutions" (Best, 1995a, p. 9). Social constructionists, in their analyses, focus as much on claims-makers and their audiences as they do on the process of claims-making itself.

Intimate partner violence is a social condition that was constructed as a major social problem during the battered women's movement in the 1960s (Schneider, 1994). This movement sought to draw public attention to private violence against women and effect law reform that would acknowledge the unique experiences of women. Battered women's experiences are constructed as a syndrome and horrific stories of violence are

recounted to typify the women and to show that intimate partner violence is a serious social problem. The claims-making activity of feminists during the women's movement has contributed to the criminalization of intimate partner violence and the emergence of numerous resources for battered women, such as protection orders, shelters, and hotlines. Feminist and clinical psychologist, Lenore Walker (author of *The Battered Woman Syndrome*, 2000), is perhaps the best-known claims-maker on the issue of intimate partner violence and has made numerous claims about the experiences of battered women through her construction of the Battered Woman Syndrome.

There are two types of social constructionists: strict constructionists and contextual constructionists. Strict constructionists are interested in examining the claims made about particular social conditions without purporting to assesspurt the validity of these claims (Best, 2003a). They are not interested in judging the credibility of claims-makers but rather in describing how these individuals go about the process of making claims (Kitsuse & Schneider, 1989). Indeed, from this perspective, validity or credibility statements would themselves be viewed as claims. Contextual constructionists, on the other hand, contextualize claims and highlight discrepancies between claims-makers' claims about social conditions using the evidentiary standards of science, law, and other disciplines (Kitsuse & Schneider, 1989). Claims based on what is considered to be the best available scientific or other expert evidence or legal reasoning will thus be privileged over common-sense or anecdotal accounts.

This research takes a contextual constructionist approach as I engage in a descriptive analysis of claims-making about the Battered Woman Syndrome. I assess

judgments of the validity of some key claims made about this construct and assessments of the credibility of those making the claims.

2. Claims-making and the History of Expert Evidence in Court

Expert evidence as we conceive of it today has been presented in American courts since the late eighteenth century. Prior to this time, the role of experts was more advisory and they were called upon to assist judges and jurors who were responsible for collecting and presenting evidence in court (Essig, 2002). In the eighteenth century, however, an 'adversarial revolution' led to dramatic changes in the roles of court personnel (Essig, 2002). Judges and jurors took more neutral positions and became passive assessors while the prosecution and defence took on the responsibility of gathering evidence. Experts also became more actively involved in court proceedings as witnesses (Essig, 2002). Throughout the nineteenth century, medical advancements boosted medical experts' social authority and physicians, in particular, became respected experts (Essig, 2002). Recently, however, there is a growing body of literature questioning the validity of scientific evidence presented in court.

According to Lederman (2002), courts have traditionally been concerned about the objectivity of expert evidence, considering the expert is retained by either the Crown or the defence and is thus expected to provide evidence that is consistent with the case put forward by that particular party. More recently, however, courts have been concerned about the reliability and validity of the scientific evidence presented (Lederman, 2002). Gold (2003) suggests that this is particularly important when "new claims for new kinds of expert evidence" (p. 10) emerge, requiring judges to assess the validity of such claims

before admitting evidence on novel theories in court. According to Lederman (2002), there are two kinds of scientific evidence presented in court. The first is evidence based on "'hard' physical and natural sciences" (Lederman, 2002, p. 36) such as DNA and fingerprints. The second is "evidence grounded in 'soft' behavioural sciences and human nature" (Lederman, 2002, p. 36) such as False Memory Syndrome, Rape Trauma Syndrome, and the Battered Woman Syndrome.

Experts testify in court to educate judges and jurors about scientific information that is beyond the average juror's knowledge (Lederman, 2002). Evidence based on behavioural science is often used to provide background knowledge and construct a framework within which jurors can interpret the rest of the evidence presented in a case (Lederman, 2002). It is then up to the judge and/or jury to assess both the credibility of the expert and the validity of the expert's claims (Lederman, 2002). It may be very difficult, however, for the average juror to judge the validity of scientific evidence if he or she lacks an understanding of the scientific information presented by the expert witness. Also, because "the adversarial nature of the criminal trial guarantee[s] contradictory expert testimony" (Essig, 2002, p. 178), the court leaves "the jury to decide, where doctors disagree" (Learned Hand, cited in Essig, 2002, p. 183).

Expert witnesses are permitted to make statements that are hearsay because experts may base their opinions on second-hand information gathered in interviews that is not corroborated by other evidence admitted in court (Thyfault, Browne, et al., 1987). Because they provide hearsay evidence, it is vital that the judge properly instruct the jury about the question of how much weight is to be given to the expert evidence. "By its nature and inherently persuasive method of presentation from an apparently learned

authority, [expert evidence] stands out as more prestigious and demanding of acceptance than the mundane evidence of ordinary witnesses relating what they saw or heard" (Gold, 2003, p. 12). Members of the jury must understand that the evidence given is in support of the expert's opinion rather than proof that particular events occurred (*R. v. Lavallee*, 1990).

In order for their testimony to be effective, expert witnesses must convince judges and jurors that the evidence presented is valid and relevant, and that their credibility and expertise are beyond question (Gatowski et al., 1997, p. 295). What expert witnesses (e.g., psychologists and psychiatrists) say in court is a form of claims-making activity because they make claims about the defendant and typify her experiences in an attempt to influence the decisions of fact-finders (i.e., judges and jurors). They use particular language and present information in particular ways so that the evidence is convincing for their audiences.

Judges, jurors, and expert psychiatric witnesses are all involved in producing 'victims' and 'social problems' in court (Holstein & Miller, 1990). This activity is called social problems work (Holstein & Miller, 1997). Court personnel present competing interpretations in an effort to present the defendant as either a blameless victim who suffers from the Battered Woman Syndrome or a responsible criminal who does not deserve victim status (Holstein & Miller, 1997). Victims are constituted using a particular 'rhetoric of victimization' in which victim status is offered, often alongside the assignment of victimizer status to somebody else (Holstein & Miller, 1990). Decisions about whether or not the defendant is worthy of victim status are often based on the assessments and recommendations of psychiatric experts (Peyrot, 1995). That is, the

defendant's behaviour may be constructed as resulting from mental illness, thus labeling her as 'mad' rather than 'bad' (Peyrot, 1995). Assignments of victim status may always be contested, particularly in court where opposing parties attempt to construct competing realities (Peyrot, 1995). Claims-making may even be considered an art in settings where counterclaims provide different interpretations about the same person or event (Holstein & Miller, 1990).

The use of expert evidence in court is increasing significantly with a growing number of novel theories being introduced in a variety of cases (Lederman, 2002). For example, "Post-traumatic Stress Disorder (PTSD) originated as a diagnosis for combat-related psychiatric problems of Vietnam veterans; but the notion of 'traumatic stress' proved remarkably flexible" (Best, 2003b, p. 307). Two syndromes under the rubric of PTSD upon which expert evidence is now admitted in court are Rape Trauma Syndrome and the Battered Woman Syndrome. Expert testimony on both of these syndromes is intended in part to inform fact-finders and dispel myths about the experiences of victims of rape and intimate partner violence, respectively (Gold, 2003). The following section examines claims-making about the Battered Woman Syndrome in court.

3. Claims-making About the Battered Woman Syndrome in Court

Expert testimony on the Battered Woman Syndrome has not always been welcome in court. It was first accepted in the United States in the case of *Ibn-Tamas v. U.S.* (1979), in which a woman was accused of killing her abusive husband. In other cases that followed, however, it proved to be "inadmissible because of the undeveloped nature of BWS as a concept and the court's perception that most of the research on BWS

was by advocates with a stake in the outcome of cases" (Downs, 1996, p. 76). Expert testimony on the Battered Woman Syndrome was first admitted to court in Canada in the case of *R. v. Lavallee* (1990), in which the defendant, like Ibn-Tamas, killed her abusive partner. This case went to the Supreme Court of Canada which, in 1990, upheld a decision to acquit the defendant.

Expert witnesses presenting evidence on the Battered Woman Syndrome may use it to typify the defendant as a battered woman, persuade the court that she suffered from the syndrome and, suggest that she was justified in her fatal response to a reasonable perception of threat. Experts engage in claims-making about the syndrome and may comment on its relation to the defendant and what they believe should be the law's response. However, not only are their claims about the syndrome and the defendant assessed in court but so also are the claims they make about their own qualifications and credibility. How expert witnesses are perceived may have a significant effect on how their claims are perceived and the impact their claims have on the court's decisions.

In this research, I examine some of the same factors addressed by experimental researchers (e.g., expert witness characteristics, the quality of evidence given in court on the Battered Woman Syndrome) but using a different approach. I do not assess the effectiveness of expert testimony on the Battered Woman Syndrome but rather, explore the kinds of claims expert witnesses make about their expertise, the Battered Woman Syndrome in general and in relation to the case under analysis, and their recommendations to the court with regard to the law's response to the case and to intimate partner homicide in general. The following section outlines the research

questions and hypotheses for the expert testimony component of this study on claims-making about the Battered Woman Syndrome.

3.1 Research Questions and Hypotheses

According to Best (1995b), there are three questions social constructionists should ask in order to analyze the content of a set of claims: "What is being said about the problem? How is the problem being typified? What is the rhetoric of claims-making – how are claims presented so as to persuade their audiences?" (p. 350). Social constructionists also question the claims-makers themselves; that is, who is making claims about the social problem? In the case of expert testimony on the Battered Woman Syndrome, a thorough analysis would question an expert witness' claim to expertise in the field of intimate partner violence and homicide in general and the Battered Woman Syndrome in particular.

The social constructionist perspective guides both the general objectives of this study and the specific research questions posed. It is important to remember that social constructionists are just as interested in claims-makers as they are in the claims made. The objectives of this research are to determine what claims are made in court and in the news media regarding the Battered Woman Syndrome when a woman is accused of killing her intimate partner, what claims are made about the appropriate responses to intimate partner violence and homicide, and who is making these claims. Specific research questions regarding expert testimony on the Battered Woman Syndrome are:

1. What claims do the expert psychiatric witnesses make regarding their qualifications and credibility as experts on the Battered Woman Syndrome?

2. What claims do the expert psychiatric witnesses make regarding the Battered Woman Syndrome. How do they define and describe this construct?
3. What claims do the expert psychiatric witnesses make regarding whether or not Lilian Getkate suffers from the Battered Woman Syndrome and other psychological symptoms related to intimate partner violence?
4. What claims do the expert psychiatric witnesses make about Lilian Getkate's perceptions and lethal response? What claims do they make about the law's response to intimate partner violence and homicide in general and in this case?

With regard to the first research question, although they are required to have certain qualifications (e.g., a doctoral or medical degree) before their evidence is admitted, it is expected that every expert witness will have expertise in the field of intimate partner violence. It is hypothesized, however, that expert qualifications and credibility will vary in terms of formal education, training, experience, and publications. Some experts may have testified in similar cases in the past, others may have conducted research on intimate partner violence and homicide, while still others may treat battered women in therapeutic settings. These factors will all relate to their credibility as 'experts' in court.

Regarding the second research question, it is hypothesized that experts will refer to Walker's research and that the Battered Woman Syndrome will be described in the way Lenore Walker first described it (in *The Battered Woman,* 1979, and *The Battered Woman Syndrome,* 1984). It is expected that the fundamental components of the Battered Woman Syndrome, such as the three-stage cycle of violence, learned helplessness, and traumatic bonding will be discussed. Although expert witnesses are not expected to refer

to the Battered Woman Syndrome as a mental disorder, it is hypothesized that they will link it to other psychological constructs and disorders, such as Post-traumatic Stress Disorder, in order to contextualize the construct in psychiatry and clinical psychology.

With regard to the third research question, it is hypothesized that all of the expert witnesses will make claims about whether or not the defendant suffers from the Battered Woman Syndrome. The extent to which they believe she fits the criteria for the syndrome is expected to differ among experts, particularly between expert witnesses retained by the Crown and those retained by the defence. It is also expected that expert witnesses will discuss other psychological symptoms and disorders presented by the defendant.

Regarding the fourth research question, it is expected that expert witnesses retained by the Crown will characterize the defendant as more culpable and suggest that her lethal actions were unreasonable. It is expected that expert witnesses retained by the defence, on the other hand, will characterize the defendant as less culpable and suggest that her behaviour was reasonable under the circumstances. It is hypothesized that the expert witnesses will refer to the law's response to female-perpetrated intimate partner homicide and make claims about the appropriate response in this case.

4. Claims-making About Intimate Partner Violence and Homicide in the Media

The news media allocate a significant proportion of their resources to reporting on crime and court proceedings. In reporting on court cases, however, the media must be selective because there is simply too much court news to cover (Howitt, 1982). "The press treatment of a court case is bound to be, at best, a pale imitation of what actually goes on in the court" (Howitt, 1982, p. 133). The news media also have the freedom to

publish information on court cases gathered from external sources that may not be admissible in court (Howitt, 1982). The news media can be considered constructionist because they make claims that may or may not be valid and construct stories around particular issues that reach a large audience (Howitt, 1982).

The media are secondary claims-makers because they reconstruct claims made by primary claims-makers, such as experts, and relate these claims to the general population (Best, 1997). They do not simply restate the claims of others but rather, strategically select and transform claims before presenting them in new ways (Best, 1997; Holstein & Miller, 1997). Because the media are secondary claims-makers, they too are involved in social problems work; i.e., they are instrumental in constructing social problems (Holstein & Miller, 1997).

The socially constructed problem of 'wife abuse' has been acknowledged by the mass media and society in general since the mid-1970s (Best, 1989a; Loseke, 1989). That intimate partner violence is a socially constructed problem does not mean that it is not a real and widespread condition. It existed long before it was brought into the public discourse and constructed as a serious problem requiring immediate attention (Best, 1989b; Loseke, 1989). The mass media and academic literature constructed intimate partner violence in similar ways so that each reinforced the other (Loseke, 1989). Unfortunately, some of the images put forward in the literature and in the media have contributed to the construction of a stereotype of the 'battered woman' such that "some women now do receive special treatment and social sympathy, but only after they conform to our images, only after they prove that they are guiltless and long-suffering, only after they show us their bruises and broken bones" (Loseke, 1989, p. 203).

The media have been relying on experts' claims to legitimate their stories since the 1980s (Berns, 2004). The use of expert claims is based on the assumption that the public will more willingly accept the claims made in the news if authors quote experts rather than simply making their own claims (Berns, 2004). The media appear to be more interested in addressing broad social problems such as intimate partner violence and abuse than specific aspects of these problems such as the Battered Woman Syndrome that are based on behavioural science evidence. One study, conducted by Berns (2004) did address the Battered Woman Syndrome in the media and found that,

> In most articles in women's magazines focusing on this theme [battered women who kill their abusers], the author argues that judges need to allow the battered woman syndrome into court so that jurors can understand what the women went through. (p. 65)

That these claims in favour of expert evidence on the Battered Woman Syndrome appeared in women's magazines may not reveal much about the way in which the syndrome is presented in the mass media more generally. The following section outlines the research questions and hypotheses for the portion of this study that seeks to identify claims made about the Battered Woman Syndrome in the news media.

4.1 Research Questions and Hypotheses

The research questions for the news media sample parallel those specified for the expert testimony sample because they too were guided by the social constructionist perspective. The similarity in research questions will also facilitate a more general discussion of claims-making in court and in the news media. The specific research questions regarding expertise and the Battered Woman Syndrome in the news media are:

1. Who is making claims about the Battered Woman Syndrome in the media surrounding the Getkate case? If these claims-makers are considered experts, what kinds of experts are they?
2. How is the Battered Woman Syndrome defined and described in the news media in relation to this case?
3. How are claims about the Battered Woman Syndrome related to Lilian Getkate? What claims are made about her lethal response?
4. What claims are made about the law's response to intimate partner violence and homicide in general, in this case, and in other similar cases?

Some of the hypotheses for the news media analysis are drawn from the literature while others are based on common sense about the news media. With regard to the first question, it is hypothesized that most of the claims made about the Battered Woman Syndrome will be made by expert witnesses in their testimony before the court because the majority of articles are written by journalists reporting on the trial as it proceeds. In addition to expert witnesses who discuss the Battered Woman Syndrome in their testimonies, the defence lawyer and Crown attorney are expected to make claims about the Battered Woman Syndrome. These claims-makers represent psychiatric and legal experts, respectively.

It is expected that, with regard to the second question, the Battered Woman Syndrome will be defined and briefly described because the public is not expected to be familiar with the construct. This assumption of the public's lack of knowledge of the Battered Woman Syndrome is based on a body of literature indicating that the public

holds misconceptions about battered women and that experts are called upon to educate judges and juries in criminal cases such as the one currently under analysis.

With regard to the third question, it is hypothesized that, because the articles had to focus on the case of Lilian Getkate and mention the Battered Woman Syndrome in order to be included in the news media sample, that all of the articles will link the Battered Woman Syndrome directly to the defendant. It is further expected that claims-makers allied with the Crown will suggest that Lilian Getkate's response to her situation was inexcusable and that those allied with the defence will argue that her lethal response was justified.

It is expected, with regard to the last question, that some of the newspaper articles will address the broader social problem of intimate partner violence and homicide, and the law's response to other cases of women who killed their abusive partners. This information will contextualize the case for the reader and bring their attention to similar cases, including the landmark case of *R. v. Lavallee* (1990) in which the Battered Woman Syndrome was first used successfully to acquit a woman for killing her abuser.

This chapter has outlined the social constructionist perspective, including the process of claims-making and typification. It has also explored the use of scientific evidence in court, primary claims-making about the Battered Woman Syndrome in court, and secondary claims-making about intimate partner violence and homicide in the media. Now that I have specified this study's research questions and hypotheses, I will describe the methodology. The social constructionist perspective informed the choice of technique used to analyze claims-making on the Battered Woman Syndrome: Content analysis.

CHAPTER III

METHODOLOGY

This study is exploratory as it seeks to understand and describe claims about the Battered Woman Syndrome in expert testimony and in news media in a single case of female-perpetrated intimate partner homicide. The research will use historical/archival data, which, according to Hagan (1993) is a "relatively neglected area of criminal justice research" (p. 224), in order to contribute to the literature on claims-making about the Battered Woman Syndrome in Canadian courts and in the media. Best (1995b) has suggested that social constructionism is "most useful as an analytic tool" (p. 349) in understanding claims-making activity. In order to understand socially constructed messages, social constructionist researchers analyze the claims-making process itself. In this study, content analysis is employed to analyze claims about the Battered Woman Syndrome in the case of one woman who killed her abusive partner.

Court transcripts were the primary source used to analyze claims-making about the Battered Woman Syndrome in this in-depth case study. Trial transcripts were sought because they are the best source of expert testimony short of attending court or analyzing audiotapes of testimony. It would be useful to supplement these records with psychiatric reports, but such confidential documents are not publicly available. The second source used to examine claims-making about the Battered Woman Syndrome was news media. Articles published in daily newspapers are easily accessible and provide a range of claims that are delivered to a large audience. The focus of this study is on claims-making by psychiatric experts testifying at the trial of a battered woman who killed her abusive male

partner. The media component of the research is used to support the primary inquiry by showing how the expert psychiatric witnesses' claims are framed by the media, secondary claims-makers, in order to support their own claims and create a particular reality for their audiences.

Before analyzing texts, researchers must identify the specific texts to be included in their samples for analysis. The following sections describe the data collection process for the expert testimony and news media samples as well as some of the strengths and limitations of the sampling methods. After identifying the expert testimony and news media samples, I introduce content analysis and explain how it was used in this research to analyze claims-making about the Battered Woman Syndrome. This chapter ends with a presentation of the case under analysis, that of *R. v. Getkate* (1998).

1. Sample Selection and Data Collection

1.1 Expert Testimony Sample

I conducted an electronic search of QuickLaw in order to identify cases of women who killed their abusive male partners in Ontario since the case of *R. v. Lavallee* in 1990. I searched only for cases since 1990 because that was the year of the Supreme Court of Canada's ruling in the case of *R. v. Lavallee* (1990) and prior to that expert testimony on the Battered Woman Syndrome had not been admitted in court to substantiate claims of self-defence. QuickLaw is a limited but recognized source for case law in Canada. The decision to limit the search to Ontario cases was made for pragmatic reasons. Once cases have been identified in QuickLaw, they are accessed directly from the courthouses where they took place. Given that several academics and staff at the Brian Dickson Law Library

told me that accessing court transcripts often involves traveling to the courthouses in person to read or photocopy the required transcripts as well as my limited financial resources, I decided to limit my sample to cases in Ontario.

After attending a QuickLaw workshop, I conducted a Boolean search of the Ontario Judgments (OJ) database for any documents that mentioned Battered Woman Syndrome, Battered Wife Syndrome or Battered Spouse Syndrome. I was advised to use a very idiosyncratic search term (batter! /2 wife wom*n spous! /2 syndrome) to narrow the search results and avoid having to manually search through hundreds of irrelevant cases. This search produced 58 documents in the Ontario Judgments database.

Because the term was specified in the search, each of the documents mentioned the Battered Woman Syndrome (or Battered Wife Syndrome or Battered Spouse Syndrome). However, many of these 58 cases only mentioned the syndrome when referring to other related cases, particularly that of *R. v. Lavallee* (1990). The judgments provided in QuickLaw were then thoroughly examined in order to identify the cases that fit the selection criteria. The ideal case would be one where a battered woman had killed her intimate partner, pleaded not guilty, had gone to trial and claimed self-defence, and had an expert witness provide testimony on the Battered Woman Syndrome. Many of the QuickLaw documents were sentencing judgments and therefore often lacked important identifying information. Using the information available, I identified nine cases of female-perpetrated intimate partner homicide. These nine cases were then examined further for the additional selection criteria. One of the cases (*R. v. Britt,* 2000) appeared to be an application for release from custody and therefore did not meet the criteria for inclusion in the sample. As mentioned earlier, women who kill their abusive male

partners face enormous pressure to plead guilty to reduced charges such as manslaughter. This tendency to plead guilty was apparent in the QuickLaw search results; in six of the cases *(R. v. Bennett,* 1993; *R. v. Cowley,* 1995; *R. v. Drake,* 1995; *R. v. Phillips,* 1992; *R. v. R. F.,* 2003; *R. v. Tran,* 1991*)* the accused had pleaded guilty to manslaughter so there was a sentencing hearing but no trial. The last two cases *(R. v. Ferguson,* 1997; *R. v. Getkate,* 1998*)* which both took place in Ottawa appeared to be ones in which the accused had pleaded not guilty to a murder charge and claimed self-defence using the Battered Woman Syndrome to substantiate this claim. In these cases, the fact that at least one expert psychiatric witness testified with regard to the Battered Woman Syndrome, resulting in them satisfying the criteria for inclusion in the sample.

In order to access the publicly available transcripts for the Getkate and Ferguson cases, I attended the Ottawa-Carleton Judicial District Court House and completed a 'Request for Transcript' form (see Appendix A). According to the form, the cost for court transcripts is $3.20 per page for the first ordering party and $0.55 per page for additional copies. I submitted transcript requests to the Elgin Street courthouse in September 2004. The court reporter in charge of the *R. v. Getkate* (1998) case contacted me with a quote of approximately $150-200 for the expert testimonies. I received copies of all three expert testimonies from the case of *R. v. Getkate* (1998) in November 2004, free of charge. The request for *R. v. Ferguson* (1997) had to be re-submitted towards the end of the year because it did not appear in the court support office's file. The court reporter in charge of the case contacted me in January 2005 with a quote of $1800 for the two expert testimonies from this trial. She informed me that a cash deposit of $1800 was required before the tapes would be transcribed and that this process would take approximately one

month to complete. The case of *R. v. Getkate* (1998) was less costly because it had been transcribed previously whereas the case of *R. v. Ferguson* (1997) had never been transcribed. I explored alternatives such as listening to the tapes and transcribing the testimonies myself but staff at the court support office did not support these options.

Due to financial constraints, I decided to conduct an in-depth analysis of a single case, that of *R. v. Getkate* (1998). Elizabeth Sheehy (2001) has commented on the inaccessibility of court transcripts and the significant consequences of this problem:

> Given that most battered women in Canada do not undergo trial and given that access to the trial transcripts for those who do is subject to a formidable financial barrier, we do not in fact have a strong research base from which to assess the need for substantive reform of the law of self-defence. (p. 535)

Walker (1989) noted that in the United States "records of trial testimony usually are transcribed only if an appeal is filed" (p. 278). If trials are only transcribed upon request, they may be available to professionals who have funds to cover the cost of having the first copy made. However, transcripts are not very accessible to the public and organizations that lack the necessary funds. Another significant problem with regard to accessing court transcripts has to do with preservation. Judge Ratushny commented on this problem and "although she does not make a formal recommendation, she suggests that a policy of preservation of transcripts be pursued, at least in the case of murder convictions" (Sheehy, 2000, p. 205). In Ontario, court records from murder trials are retained in archives for a period of 20 to 30 years; records from manslaughter trials are retained for approximately 6 years (N. Kirkish, personal communication, February 2, 2005). Staff at the Ottawa-Carleton Judicial District Court House court support office admitted, however, that although these records are preserved, it is not always possible to

locate the tapes in Ontario archives (N. Kirkish, personal communication, February 2, 2005).

2.1 News Media Sample

Because expert testimony on the Battered Woman Syndrome will be explored in a single case, *R. v. Getkate* (1998), this study explores claims-making about the Battered Woman Syndrome in the news media for this case only. Newspaper articles on Lilian Getkate's case were retrieved from the Canadian Newsstand database available through the University of Ottawa's library website. This database offers access to full text articles from Canadian newspapers including both national and major regional dailies.

The criteria for inclusion in the media sample were that specific keywords appeared in the title or text of newspaper articles listed in the Canadian Newsstand database. These keywords were chosen to specify only articles that focused on the Getkate case and mentioned the Battered Woman Syndrome. As in the QuickLaw search for court transcripts, the Battered Woman Syndrome was also referred to as Battered Wife Syndrome and Battered Spouse Syndrome. Thus, newspaper articles with both 'Getkate' and 'Battered Woman Syndrome' or 'Battered Wife Syndrome' or 'Battered Spouse Syndrome' in the title or text were selected for this sample. The electronic search revealed 17 articles though 1 was an early edition of an article that was published in its final form. Only the final edition of this article was included in the sample since they were too similar to serve as independent cases.

The final media sample consisted of 16 articles (see Appendix B). Of these, 15 appeared in *The Ottawa Citizen* and 1 in *The National Post*. Twelve of the articles were

written by a single journalist, one was written by another journalist, two did not specify the author, and 1 was a letter sent to the newspaper by the defendant's lawyer. The articles were published between September 16, 1998, and November 16, 1998, around the time of Lilian Getkate's murder trial.

1.3 Strengths and Limitations

There are several advantages to conducting case studies. They provide the opportunity for an in-depth analysis and a chance to examine the inner workings of one case. Another advantage of focusing on a single case, particularly a criminal trial, is that the facts of the case are controlled for. It is therefore easier to compare claims-making activity because although the claims may vary significantly, they are all based on the same underlying events and individuals. In a single criminal trial, expert witnesses are all questioned by the same Crown attorney and defence lawyer. Thus, the style of questioning and type of information sought by these litigants remains relatively constant across expert witness testimonies.

R. v. Getkate (1998) was a particularly good case for a study of claims-making about the Battered Woman Syndrome. Three expert witnesses testified at her trial, one for the Crown and two for the defence. This allowed for comparisons of claims-making activity both between the testimonies of the two psychiatrists retained by the defence and between the testimonies of the psychiatrists retained by the defence and that of the Crown's expert witness. This case illustrates many of the problems battered women face with regard to self-defence law and expert evidence on the Battered Woman Syndrome. It

was the third case of intimate partner homicide perpetrated by a battered woman in Ottawa since that of *R. v. Lavallee* (1990).

Historical/archival documents such as trial transcripts are in many ways the only means available to examine claims-making in past legal proceedings. However, relying on written texts to analyze what was communicated verbally in court means that all of the tonal and nonverbal cues related by the expert witness to those present in court are lost in the transcription. These cues are important in claims-making activities as a witness' tone of voice or perceived confidence can strengthen or weaken the effect a claim has on the intended audience. Nonverbal gestures and facial expressions can increase or reduce the persuasiveness of a message relayed by a claims-maker, in this case an expert witness. Tapes of legal proceedings are transcribed by court reporters but, because the transcription process is a long one and it may be undertaken several years after a trial has occurred, there may be errors in the transcripts. Transcription is restricted to trained court reporters so these documents likely do not have nearly the number of errors that might result if the transcription had been undertaken by untrained transcribers.

Focusing on a single case in an analysis of news media has several advantages including the opportunity to examine the reactions of individuals intimately connected to the defendant and the victim. In this case, the claims and counter-claims made in the news media allowed for a much deeper understanding of the case and revealed much about the way particularly realities are constructed about the defendant. Focusing on news media related to the criminal trial of Lilian Getkate allowed for an exploration of claims made about the significance of this trial in light of other, similar cases.

There are also several limitations to relying on a sample comprised of newspaper articles written on a single case. One limitation is that the articles tend to be written in a short timeframe and be somewhat repetitive in nature because they follow a single story. In the case of Lilian Getkate, the newspaper articles were published between September 16, 1998, and November 16, 1998, a period of only two months. Also, because they followed her trial, factual information from one article appeared in subsequent articles to summarize the story for readers who had not read all of the articles or to highlight the major pieces of information that had been revealed in court so far. Because the news is written as a story unfolds and it builds on information published in earlier stages of the story, newspaper articles do not represent independent cases and cannot be analyzed as such (Krippendorff, 2004, p. 99).

Another limitation is that the majority of articles about the Getkate case were published in a single newspaper (*The Ottawa Citizen)* and written by a single journalist (Peter Hum) who was presumably assigned to the case. As mentioned above, 12 of the 16 articles in the final media sample were written by this single journalist, while one article was written by another journalist, two articles did not name the author, and the last article was written by Lilian Getkate's lawyer, Patrick McCann. The fact that most of the articles were written by one author means that there is less variety in the construction of claims.

2. Content Analysis

Content analysis is a technique designed to objectively examine the content of messages in visual, oral or written communication (Berg, 2001; Neuman, 1997). While

this technique is intended to facilitate objective analysis, it is not entirely free of subjectivity. Those who use content analysis strive to remain as objective as possible but, as with all social science research methods, absolute objectivity is impossible. There is much debate in the literature and in research methods texts about whether content analysis is or should be a quantitative or qualitative method (Berg, 2001). It was first developed for quantitative newspaper analysis (Krippendorff, 2004) but has more recently been used as a technique for qualitative analysis.

Critics of quantitative content analysis argue that the meaning of messages may be lost when it is converted into numbers (Berg, 2001). However, Krippendorff (2004, p. 16) questions the distinction between quantitative and qualitative content analysis, saying that all textual analysis is qualitative whether the information is represented numerically or not. Ultimately, "using numbers instead of verbal categories or counting instead of listing quotes is merely convenient; it is not a requirement for obtaining valid answers to a research question" (Krippendorff, 2004, p. 87). Qualitative content analysis is generally preferred by researchers taking feminist and other critical and interpretative perspectives (Neuman, 1997). Included among these researchers are social constructionists who seek to understand how messages are constructed and communicated. Social constructionist analysis examines discourse to understand the construction of reality (Krippendorff, 2004). Many researchers blend quantitative and qualitative content analysis; however, this study uses content analysis as a qualitative method only.

Another debate with regard to the use of content analysis is whether it should examine manifest or latent content (Berg, 2001). Manifest content analysis assesses "surface structure" (Berg, 2001, p. 269) or the information that is visible in the messages

being analyzed. Latent content analysis, on the other hand, looks at "deep structure" (Berg, 2001, p. 269) or the meaning of the messages. Manifest content analysis is very reliable but lacks validity because it does not take into consideration the context of the information that is coded (Neuman, 1997). Latent content analysis, on the other hand, contextualizes the information that is coded so that it is more valid but less reliable than manifest content analysis (Neuman, 1997). Social constructionists may include both manifest and latent content in their analyses. In this study, I examine only the latent content of claims-making in order to contextualize the messages communicated in court and in the news media.

Content analysis requires researchers to construct and develop a grid with cases along one axis and categories along the other axis. For the expert testimony sample in this study, each expert witness represented a case and claims were further sorted depending on whether they were made during the examination-in-chief, cross-examination, or re-examination. For the news media sample, each published article represented a case. In content analysis, categories along the other axis may emerge through inductive and/or deductive processes. The inductive approach involves starting with an open grid that is developed by identifying important categories in the documents under analysis (Berg, 2001). The deductive approach begins with a closed grid of categories identified by a particular theory (Berg, 2001).

This study relied on the inductive approach to grid development such that categories emerged from the court transcripts and newspaper articles themselves. Each case was analyzed individually and after the grid was complete, categories were grouped into broader themes. The texts were analyzed by reading through the testimonies and

newspaper articles and coding each phrase or sentence in the most appropriate category. For the expert testimony component, the broad themes that emerged were related to expert qualifications; Lilian Getkate's credibility; the psychiatrists' assessments of Lilian Getkate; the history of the Getkates' relationship; and the Battered Woman Syndrome. For the media component, the broad themes that emerged were related to claims about Lilian Getkate and her husband, Maury Getkate, that portrayed them in a positive, neutral, or negative light; claims made by each of the expert psychiatric witnesses; and claims made about the Battered Woman Syndrome. Information was then drawn from this comprehensive Excel grid in order to answer the research questions posed in this study.

2.1 Strengths and Limitations

Content analysis, as a technique for analyzing text, has many strengths and limitations. This technique is unobtrusive and non-reactive since it uses messages that have already been delivered (Berg, 2001). It is often a cost-effective methodology though not when using documents such as court transcripts. Newspaper articles and other media, on the other hand, are inexpensive and therefore ideal texts for research using content analysis. One of the major limitations of this technique is that it does not allow researchers to identify causal relationships between variables (Berg, 2001). Content analysis also "cannot reveal the intentions of those who created the text or the effects that messages in the text have on those who receive them" (Neuman, 1997, p. 279).

Although content analysis is the most appropriate analytic technique for this research, there are some limitations in its application to the selected samples. Content

analysis generally relies on random sampling (Neuman, 1997); however, the case of *R. v. Getkate* (1998) was not selected randomly. I do not attempt to make generalizations from this case as the sample consists of three expert testimonies that are not independent of one another and newsprint articles that build on articles published previously.

This chapter has outlined the sample selection and data collection process for both the expert testimony and news media samples, as well as presenting the analytic technique for this research and its limitations. The following section introduces the case of *R. v. Getkate* (1998). The next chapter presents this study's findings based on an in-depth analysis of each expert testimony, a broader analysis of claims-making across all three expert testimonies, and an analysis of claims-making in the news media.

3. Introducing the Case of *R. v. Getkate*

The following section will introduce in detail the case of Lilian Louise Getkate. The information used to create this account of her relationship with her husband and the offence for which she was convicted was gathered from Justice Chadwick's sentencing judgment and the expert psychiatric evidence presented by Dr. Graham Glancy, Dr. Wendy Cole, and Dr. John Bradford. Because these documents are all sources of claims-making and based largely on claims made by Lilian Getkate herself, my intent is to present only the information that was generally accepted as fact. Where there were competing claims about the 'facts,' I note that the information was alleged and not accepted by all of the claims-makers.

Lilian Getkate grew up in British Columbia and came from a supportive home. Her parents eventually separated and Lilian completed less than grade 12 education. She

met Maury Getkate in Lethbridge when she was 19 years old and moved to Alberta soon after to be with him. They lived together as common-law partners for 11 years before moving to Guelph so Maury could complete his Master's degree in Psychology. Maury Getkate was allegedly verbally but not physically abusive towards Lilian at this time and they were married after moving to Ontario. It was while they lived in Guelph that Maury allegedly became physically abusive towards Lilian. The physical abuse allegedly became more pronounced later on when Maury got a job and the family moved to Ottawa.

Maury Getkate eventually earned his PhD and worked as an industrial psychologist for the human resources division of the RCMP. The evidence suggests that he had an interest in Ninjutsu, black art, and explosives. Lilian Getkate had expressed an interest in going to counseling with Maury but she claimed that her husband would not join her because he felt it was unprofessional for a psychologist to seek counseling. The couple had two children, Dara and Kevin (aged 12 and 8 at the time of the offence).

According to Lilian's testimony, on the evening of December 10, 1995, Lilian and her husband had been out with their children. After putting the children to bed and going to bed herself, Lilian was awakened by Dara who was having bad dreams. Lilian went to Dara's room to lie down with her. Maury came down soon after to speak with Lilian and called her out from Dara's room. He allegedly proceeded to have non-consensual intercourse with her outside of their daughter's bedroom. The next thing Lilian Getkate said that she remembered was hearing footsteps and two bangs and then turning on the light in her bedroom to find her husband lying there, covered in blood. She called 911 and the police arrived at the home.

Lilian Getkate was charged with first-degree murder for killing her husband. She admitted to killing him but claimed self-defence, using the Battered Woman Syndrome to substantiate this claim. Mid-way through the trial, the judge told the jury that there was insufficient evidence to convict her of first-degree murder and said they could convict her of second-degree murder or manslaughter or acquit her of the charges. After four days of deliberation, the jury delivered a verdict of guilty of manslaughter. Justice Chadwick then sentenced Lilian Getkate to two years less a day, to be served in the community.

CHAPTER IV

RESULTS AND ANALYSIS OF EXPERT TESTIMONIES AND NEWS MEDIA

This chapter presents the results of an in-depth case study. The purpose of this analysis is to reveal the nature of claims made about the Battered Woman Syndrome and how these claims are constructed in court and in the news media. Each section of the results is divided into four sub-sections. The first examines the claims-makers and what claims they make about their qualifications and credibility. The second examines claims made about the Battered Woman Syndrome and how this construct is contextualized in psychiatry. The third examines claims made about how the Battered Woman Syndrome and associated psychiatric symptoms relate to the defendant. The fourth examines claims made about the law's response to intimate partner violence and homicide in general and in this particular case.

First, the results of the expert testimony sample are presented, followed by the results of the news media sample. Because the focus of this research is claims-making in court, the results begin with an individual analysis of each expert testimony. The three expert psychiatric witnesses were Dr. Graham Glancy (for the defence), Dr. Wendy Cole (for the defence), and Dr. John Bradford (for the Crown). Lilian Getkate's defence lawyer was Mr. Patrick McCann and the Crown attorney for the case was Ms. Julianne Parfett. Dr. Glancy was the primary expert witness for the defence and, because he made claims about the Battered Woman Syndrome in support of self-defence law, the results of his testimony are presented first. Dr. Cole was the second expert witness for the defence and, because her testimony followed Dr. Glancy's in Lilian Getkate's trial, the results of her

testimony are presented after Dr. Glancy's here as well. It is important to establish the claims made about the Battered Woman Syndrome on behalf of the defence before discussing counter-claims made on behalf of the Crown. Thus, although Dr. Bradford testified before Dr. Glancy and Dr. Cole in Lilian Getkate's trial, the analysis of his testimony is presented last here because he made counter-claims about the Battered Woman Syndrome on behalf of the Crown. Following the three individual expert testimony analyses is a cross-expert witness analysis of the claims made about the Battered Woman Syndrome in court. I then present an analysis of claims-making about the Battered Woman Syndrome in the news media coverage of Lilian Getkate's trial. This chapter concludes with a broad analysis of both the expert testimony and news media results.

1. Dr. Graham Glancy (Defence Witness)

Dr. Graham Glancy testified on behalf of the defence on Monday, September 28, 1998. Mr. McCann's examination-in-chief was conducted in the morning; Ms. Julianne Parfett's cross-examination and Mr. Patrick McCann's re-examination were conducted in the afternoon. Dr. Glancy's report was filed as Exhibit 48 and his curriculum vitae as Exhibit 49. Dr. Glancy was asked by Mr. McCann to assess Lilian Getkate and met with her approximately six months after she killed her husband.

1.1 Claims About Expert Qualifications and Credibility

Defence lawyer, Patrick McCann, established Dr. Glancy's credentials by reviewing parts of the expert witness' curriculum vitae. Dr. Glancy confirmed and

qualified the various statements Mr. McCann made about the doctor's experience and achievements. They established for the court that Dr. Glancy had a wealth of experience as a physician, educator, and consultant. They highlighted his experience treating women, particularly women victims of intimate partner violence, and his work related to the Battered Woman Syndrome (publications and testimonies).

Dr. Glancy has practical experience as a licensed physician with specialist qualifications and he works as a private practitioner in forensic psychiatry. Before working in private practice, he worked at the Clarke Institute of Psychiatry in Toronto. There, he was Staff Physician, Staff Psychiatrist, Chief Psychiatrist for the in-patient service, and Chief Psychiatrist at the Forensic Service. Dr. Glancy has worked for the Ontario Ministry of Corrections, treating people being held in detention and correctional facilities. He has also worked as a consultant for the Metropolitan Toronto Forensic Service (METFORS) at the Clarke Institute of Psychiatry. In addition to his practical experience, Dr. Glancy taught as both a Clinical Assistant Professor in the Faculty of Medicine at McMaster University and an Assistant Professor in the Department of Psychiatry at the University of Toronto. He recently received a special distinction honour in psychiatry and is both a Fellow at the Royal College of Physicians and Surgeons of Canada and a Fellow of the Royal College of Psychiatrists in England.

Dr. Glancy has significant experience with women who are victims of violence and those in conflict with the law. In his work for the Ontario Ministry of Corrections, he attends the Metro Toronto West Detention Centre where all the women accused of a criminal offence in Toronto are detained. He has also assessed and treated women who were victims of domestic violence and abuse at the Clarke Institute of Psychiatry.

Additionally, he contributed to the design and implementation of a program for male batterers at the Clarke Institute of Psychiatry.

Dr. Glancy considers himself to be a general forensic psychiatrist. While he has worked in the area of sexual offenders, he has published and presented mainly on the subject of domestic violence. He claimed to be familiar with the literature on the Battered Woman Syndrome. His publications include a co-authored paper entitled 'Battered Woman Syndrome Defence in the Canadian Courts,' published in *The Canadian Journal of Psychiatry*, a paper entitled 'Battered Spouse Defence,' published in the *Canadian Academy of Psychiatry and Law* newsletter, and a book review of J. Lewis Herman's 'Trauma & Recovery,' which discusses trauma suffered primarily by women. Dr. Glancy presented a paper entitled 'Battered Woman Syndrome Defence' at the American Academy of Psychiatry and the Law, gave a lecture on psychopathology and spousal violence entitled 'Sex and Violence in the Court Room – Penetanguishene', and gave a seminar at the Crown Attorney's Annual Conference. Finally, in 1994, he conducted a radio interview entitled 'Observations of Battered Woman Syndrome'.

Dr. Glancy has assessed and treated several women with regard to the Battered Woman Syndrome and has testified in court on the subject of the Battered Woman Syndrome approximately eight times. He did not claim to have legal expertise based on his experience testifying in cases of intimate partner homicide. Instead, he pointed to "His Honour who is the legal expert in this court" (p. 1027). Dr. Glancy clearly differentiated his role and expertise from those of others authorities, particularly the police:

> ...[Lilian Getkate's] psychiatric interview is not the same as the police taking a statement,... it is not our job to find out who did what to whom and when and

> carefully detail that so that it can be read out in court as the facts of the case. (p. 1029)

He stressed that the interviewing techniques employed by psychiatrists differ considerably from those employed by the police and that they have very different training and goals with regard to interviewing an accused. He noted that even psychiatrists, such as Dr. Bradford, Dr. Cole, and himself, may employ different interviewing techniques depending on the goals of their interviews. Although he wished that he had been able to document the specific times of particular incidents that occurred, he justified not having done this, saying, "...that is not particularly my training, that is not the purpose of my examination..." (p. 1031). Instead, "what we tried to do in a forensic examination is to put the offence in a psychological context" (p. 1032).

1.2 Claims About the Battered Woman Syndrome

Dr. Glancy spoke at length about the Battered Woman Syndrome and how the construct is understood. First, he defined a syndrome as "a collection of signs and symptoms that a person has" (p. 962) and then he specified that "in battered woman syndrome, it is believed that these women have a pattern of perceptions and responses which are thought to be the result of repeated abuse within a relationship" (p. 962). He went on to describe Walker's research and how she conceptualized the Battered Woman Syndrome:

> ...the definitive researcher and writer in this field is a woman called Dr. Lenore Walker who looked at a series of women who were abused within relationships and attempted to define the characteristic responses of these women, and Dr. Walker's definition, if we need a definition of the battered woman syndrome, is that any woman can be subjected to violence in a relationship. It could happen to anybody at any time, but it is when a woman stays in the relationship with

> repeated at least two episodes of violence that she may be defined as having battered woman syndrome. (p. 962-963)
>
> ...the woman needs to have the responses and perceptions, particular responses and perceptions in order to be defined as having the battered woman syndrome. It is not enough that she is just abused more than once in the relationship. It is that she looks at certain things in a certain way and presents with certain signs and symptoms as a result of the battering. (p. 963)

Dr. Glancy also discussed the cycle of violence theory that Walker proposed in her research:

> ...[Walker] coined it the cycle of violence, and in the cycle there are three specific phases. There is the tension-building phase where there may be arguments about the various issues within the marriage and the abuse may start a little bit in that phase with some pushing and some grabbing, etc., and this works up, gradually the tension builds up to the acute battering phase where there is a major battering incident, and very often after that, particularly in the beginning of the relationship, there is the loving contrition phase where the man may come back the next morning and apologize, say he is going to get help with his drinking, may bring her flowers and say everything is going to be okay. It is observed by many in the field that as the relationship goes on, the loving contrition phase starts to disappear. (p. 972)

Dr. Glancy agreed that the loving contrition phase usually disappears. However, he claimed that if it does not disappear, that it is not evidence that the abuse is not chronic. Dr. Glancy also explained how the loving contrition phase works to keep the woman in the relationship. He even compared leaving an abusive relationship to quitting smoking, claiming that "the longer you leave it, the harder it is to ever actually make the move" (p. 973). Important to the cycle of violence is that the violence escalates over time. Dr. Glancy touched on this pattern in cross-examination, agreeing that an aspect of the Battered Woman Syndrome is its escalation rather than just its existence. Ms. Parfett also questioned him about battered women who kill and their perception that something was different about the violence during the last incident before the offence. Walker (2000) has suggested that battered women develop a sensitivity to their partners' behaviour patterns

and are eventually able to predict the onset of an abusive episode. Dr. Glancy referred to research supporting this pattern:

> ...there is a lot of research in at least three of the major studies that has shown that women have an ability to perceive danger, so they can predict when a battering incident is going to take place at times by the sort of level of tension rising, and also the seriousness of the battering that might take place at any one time. (p. 989)

This sensitivity to their partners' pattern of violence may be particularly important when the women sense a threat of lethal violence.

Dr. Glancy spoke about learned helplessness during cross-examination. He noted that, with regard to the Battered Woman Syndrome, "...the concept of learned helplessness was considered to be too simplistic, and in fact Seligman who coined the term has reworked it into a more complex construct" (p. 1047). He also talked about traumatic bonding in his testimony. He described this phenomenon, saying that battered women "often have... what is called a traumatic bonding, that people in traumatic situations even when it is with a stranger can end up bonding in a very intense way" (p. 965-966). He gave the example of a person involved in a car crash who may then develop a strong emotional bond with one of the policemen or paramedics that helped them through a traumatic situation. He also introduced a similar phenomenon called Stockholm Syndrome that was originally observed in a group of hostages who developed a strong emotional bond with the bank robbers who had taken them hostage. Stockholm Syndrome is most commonly used today to describe the emotional bond between victims of kidnapping and their captors. In abusive relationships, Dr. Glancy claimed that "it is this traumatic bond that keeps the abuse within the relationship. It becomes a secret

within the relationship, and the longer you leave it, the harder it is to tell anybody" (p. 967).

Dr. Glancy listed several different forms of abuse that a battered woman may experience. He said, for example, "Dr. Walker described these in her ground-breaking research where there is not only physical abuse but there is psychological abuse, and there is sexual abuse" (p. 973). He suggested that, although sexual abuse is considered to be the worst form of abuse, there are other forms of abuse that may have a greater impact than physical abuse:

> ...I have seen relationships where women have many of the characteristics of the battered woman syndrome where the physical abuse has been fairly isolated, but it is the psychological or the repeated psychological abuse often accompanied by threats, dire threats of physical abuse. So, sometimes there doesn't need to be very much physical abuse as long as there are threats of physical abuse there, which serves to control the woman, to keep her in her place in the mind of the battering husband. (p. 975)

Dr. Glancy claimed that psychological abuse, particularly social control, "can be as powerful as physical abuse itself" (p. 974). Social control, in the context of battering relationships, refers to batterers' efforts to isolate their partners by demanding to know where they are and who they are with at all times, by limiting their communication with family and friends, and by limiting their access to income by managing the finances or refusing to let their partners be employed (Walker, 1984). He listed some other major forms of psychological abuse, including "strategies aimed to reduce the woman's self-esteem so insulting her, degrading her, humiliating her, frequent put down all the times, telling her she is no good, she is a failure, on a repeated basis" (p. 974). He also agreed that it "would be typical in battered spouse syndrome" (p. 994) for the woman to downplay the level of violence she was experiencing.

Dr. Glancy explained how the Battered Woman Syndrome fits into the psychiatric classification system of mental disorders. First, however, he described the DSM and how it is used in psychiatry:

> We have various classification systems in psychiatry. The main one being what is called the DSM-IV which is a North American classification system which has come to be used generally over the rest of the world as well. Now, DSM-IV attempts to list symptoms which might go towards each diagnosis that is called operative criteria. So, if you have this, this and this, this suggests that you would have a certain diagnosis. What it doesn't do is attempt to delineate causes of disorders. (p. 1020)

Dr. Glancy reinforced that the DSM-IV does not specify the causes of the disorders listed. He explained that, in the DSM-IV, "there is no listing of battered woman syndrome, because that implies that this woman has these symptoms because she is a battered woman, and the DSM-IV does not use a causal classification" (p. 1021). Dr. Glancy noted, however, that "many of the symptoms of battered woman syndrome generally come under those two diagnoses, dysthymia or chronic post-traumatic stress disorder" (p. 1021).

Dr. Glancy mentioned a psychiatric construct proposed by Dr. Judith Lewis Herman, known as complex Post-traumatic Stress Disorder (PTSD). This disorder, not currently listed in the DSM, "describes people who have had prolonged periods in abusive situations" (p. 1021). In cross-examination, he noted that "the characteristics of battered woman syndrome were worked out some years before the complex post-traumatic disorder, so that coming at the same characteristics from a different angle" (p. 1043). Meeting the criteria for complex PTSD is not a requirement for the Battered Woman Syndrome but, rather, an "alternative way of looking at it" (p. 1043). Dr. Glancy stated that, regardless of whether one is talking about chronic or complex PTSD, what is

important is that "the trauma referred to in post-traumatic would be the abusive relationship, the chronic abusive relationship" (p. 1022). Another DSM-IV diagnosis, aside from PTSD, that is related to the Battered Woman Syndrome is depression. Dr. Glancy clarified the relationship between these two constructs in cross-examination by agreeing with Ms. Parfett's statement that "...although depression may be a part of battered woman syndrome, you couldn't reverse that and say that everybody who is depressed is a victim of battered woman syndrome" (p. 1041-1042).

There are several other psychological characteristics that are said to be found among women suffering from the Battered Woman Syndrome. Dr. Glancy typified battered women's experiences by constructing a sort of psychological profile. For many of the characteristics included in this profile of the typical battered woman, Dr. Glancy admitted that it is difficult to know whether the women had these characteristics before they entered abusive relationships or whether they developed these characteristics as a result of the abuse.

It is clear from Dr. Glancy's testimony that any woman can become involved in an abusive relationship. He mentioned several times in his testimony that "...any woman can be subjected to violence in a relationship. It could happen to anybody at any time" (p. 962); "...any woman can get into a battering relationship" (p. 978-979); "...any woman can get into a relationship that can turn violent" (p. 980). That is, there is not necessarily something different about the women who do become victims of intimate partner violence.

1.3 Claims About Lilian Getkate and the Battered Woman Syndrome

In stating the basis of his claims about Lilian Getkate, Dr. Glancy indicated that "I had a lot of information to go on including the other psychiatrists' reports and also substantial portions of the crown brief, but in the end it hinges greatly on what she told me" (p. 1031). He agreed, upon cross-examination, that corroborative evidence is important and the amount of third party information in this case "is not entirely remarkable" (p. 1062). This lack of supporting evidence may go to the credibility of Dr. Glancy and his failure to solicit corroborative evidence or to the credibility of Lilian Getkate, suggesting that her account was not entirely truthful. This issue was revisited in cross-examination, when Dr. Glancy confirmed that the information gathered regarding Lilian Getkate's relationship with her husband came "almost exclusively" (p. 1039) from her account. Ms. Parfett questioned Dr. Glancy about his use of the word 'evidence' when referring to information gathered during his interview with Lilian Getkate. Dr. Glancy replied, saying, "I think Your Honour will tell us that psychiatrists can use hearsay which may go to the weight of his evidence, that can be used in his evidence" (p. 1098).

According to Dr. Glancy's testimony, Lilian Getkate suffered from "a constellation of various forms of physical abuse linked with psychological abuse and serious threats, as well as perhaps most importantly some sexual abuse" (p. 1066). It was also clear to him from Lilian Getkate's account of her relationship with Maury Getkate that there was an element of social control. Although there was some evidence against her claim that there was an element of control in the relationship, Dr. Glancy suggested that this does not mean the social control was not exerted. During cross-examination he

claimed that, in the case of Lilian Getkate, "there are significant elements of social control which... along with the psychological sexual physical abuse and the threats, this forms the type of control which is seen in battered woman syndrome" (p. 1086).

Ms. Parfett questioned Dr. Glancy in cross-examination about whether or not Lilian Getkate was familiar with the Battered Woman Syndrome at the time Dr. Glancy interviewed her. He replied that "she didn't have any books and she didn't believe that Dr. Cole had put words in her mouth" (p. 1056) regarding the syndrome. Upon re-examination, Dr. Glancy said 'no' when Mr. McCann asked if there was any indication that "she was painting a defence for herself" (p. 1116). Dr. Glancy noted that Lilian Getkate's familiarity with the Battered Woman Syndrome was important because he was involved in a case where a woman who may well have met the criteria for the syndrome owned books on it and that this reduced the credibility of her claims about being a battered woman. Dr. Glancy indicated that he did not believe Lilian Getkate had provided information that was consistent with the syndrome in order to appear as though she suffered from the syndrome.

Although Lilian Getkate did not claim to be familiar with the Battered Woman Syndrome, she did identify with certain aspects of the syndrome in her interview with Dr. Glancy. Dr. Glancy claimed that Lilian Getkate "had noted escalating violence" (p. 1026) in her relationship, that there was evidence that the physical abuse was increasing in intensity, and that this led her to believe that she would be sexually abused further, her husband would kill her, and her daughter was at risk of being sexually abused as well. Dr. Glancy's assessment of the validity of these beliefs will be examined in the next section on the law's response to intimate partner homicide.

In addition to a lengthy interview, Dr. Glancy administered a battery of psychological tests to Lilian Getkate. He found her intellectual functioning to be in the normal range and found no evidence that she was exaggerating or lying on the personality tests administered. According to the personality tests, "she had demonstrated a profile which is typical of individuals who are generally worried, tense, anxious, self-critical, lacking in confidence, and showed strong dependency needs" (p. 1016). He elaborated on this profile and concluded that "...this fits very well what we know about Mrs. Getkate so far" (p. 1016-1017). Dr. Glancy noted the many other personality characteristics revealed by the tests and confirmed that this information was consistent with the rest of the information presented about Lilian Getkate in the trial. When questioned in cross-examination, he claimed that although the personality tests were not specifically related to the Battered Woman Syndrome, they did help in forming an opinion about whether or not Lilian Getkate suffered from the syndrome and in being confident about that opinion. He also typified Lilian Getkate by suggesting that some of the psychological characteristics revealed are "often found in women who are in long-term abusive relationships" (p. 1017).

Dr. Glancy claimed that the tests "showed no indication of general pre-disposition towards violence" (p. 1018), "there was no indication that Mrs. Getkate was an anti-social personality disorder or a psychopath, and therefore, somebody that would be prone to aggressive behaviour in many settings" (p. 1018). He made claims about Lilian Getkate's character based on psychological tests and her history:

> She was generally a pro-social person and this is confirmed by a history of her life so far. She has not been in trouble with the law, she hasn't had multiple assault charges, etc. It is confirmed by the psychological testing which doesn't reveal her as a person who is a criminal or antisocial or violent in any way. (p. 1033)

Dr. Glancy suggested that, because there was no indication of a violent personality, there must have been something else occurring that made her act the way she did: "So, this makes us therefore [try] to look harder to try and understand why this particular incident happened at this particular time. It is not just that she is an aggressive anti-social sort of person" (p. 1018-1019). Based on Dr. Glancy's assessment of Lilian Getkate, he was able to exclude several theories of why she killed her husband, Maury Getkate. However, although some theories do not seem to explain her behaviour, Dr. Glancy stated that these theories cannot be definitively excluded. He also agreed, in cross-examination, that most people who commit intimate partner homicide do not have a history of aggressiveness. This information suggests that although Lilian Getkate did not have an aggressive personality or a history of violence, this is actually typical of people who kill their intimate partners.

During the examination-in-chief, Dr. Glancy noted that "[Lilian Getkate] just felt trapped, powerless, helpless..." (p. 1009), which suggests she had some of the perceptions characteristic of people who develop learned helplessness. In portraying battered women as 'true' victims, Dr. Glancy warned that "we have to be careful not to add [a] new stereotype to the battered woman, that she is some lonely passive woman who never goes out of the house" (p. 1086). He noted that this image of the battered woman "is really not consistent with most women who have battered woman syndrome in a big city today" (p. 1087). Dr. Glancy also claimed, upon re-examination, that "...in fact to a great extent, the battered woman of the '90s [is] sent out to work and earn money for the controlling husband. So there is often a reversal in that respect" (p. 1119).

These claims offer a modified portrait of the battered woman that is different from that originally painted in the literature and in the media.

1.4 Claims About the Law's Response

Dr. Glancy explained that the criminal justice system's response to intimate partner violence has historically been very poor:

> ...it has been considered in much of the writing on this subject that the legal remedies right up to fairly recently for women who have been assaulted in a domestic relationship were not as readily available as people who are assaulted or have crimes committed against them in society at large... (p. 959)

Dr. Glancy claimed that Lilian Getkate did not believe a restraining order would protect her and that her belief may have been very accurate. "She believed that his powers were greater than those of a restraining order or a court order" (p. 1007). Dr. Glancy confirmed that "just because there is a restraining order, if the man really wants to go after the woman, that is not going to stop him" (p. 1007). He notes that this reality is reinforced by statistics and in the media. Dr. Glancy highlighted some of the specific improvements in the criminal justice system's response to intimate partner violence since the women's movement, suggesting that improved services, protection, and support mean that "more recently women have been much better served by the courts" (p. 960).

Dr. Glancy noted that because of research done in the past 20 years, the public now has a better understanding of the reasons many women cannot leave abusive relationships. He addressed several of these reasons, including self-blame, traditional family values learned through childhood socialization, religious beliefs, the fact that she still loves him (though he claims this factor is not found in the literature), lack of social support and access to legal services, lack of access to finances, fear that she will lose her

children or have to leave her children with the abuser who may then abuse the children, and fear that her partner may kill her if she leaves, particularly if he has threatened to do so in the past.

It is clear from Dr. Glancy's testimony that women are at an increased risk of death after they have left an abusive relationship: "...even if there is a restraining order on a man, women are perhaps most at risk of being murdered by their spouses in the two years after they leave him" (p. 1006); "...you are at risk after you have left a man..." (p. 1007). The idea that a woman may be more at risk of death after leaving her abuser is reinforced in the media, according to Dr. Glancy:

> ...every so often there is a highly publicized case where a woman leaves a man and he goes after her and kills her, and every time one of those happens, and there is intense publicity, this serves to keep a lot of women trapped in relationships because they think, well, if that can happen to that one woman, even if she is only one in a thousand or one in a million even, it could happen to me. (p. 968)

According to Dr. Glancy's testimony, Lilian Getkate believed "that he would come after her, and that he would kill her and she really believed this at some time or other that he [Maury] would definitely kill her should she ever leave him" (p. 1007). After all, he had allegedly threatened to "...go after her family and friends were she to leave him..." (p. 1006), which may have kept her from seeing leaving as a viable option. According to Dr. Glancy's testimony, the history of psychological, physical, and sexual abuse in the Getkates' relationship "shaped her perceptions about how she could handle things as things came into crisis right at the end" (p. 10090. Dr. Glancy gave his opinion about the validity of Lilian Getkate's perceptions and her reactions based on these perceptions:

> It would be my opinion that at that time that her belief would be that she had no protection left, that she didn't believe that the police were the answer because he

> was in the RCMP, she didn't believe she could leave for all the reasons that we have discussed, she didn't believe she could get the children to a place of safety, that she was trapped in the relationship for all the reasons that we have discussed, that she didn't have the wherewithal, the energy to leave any more any way, and that there was no options available to her at that time except to defend herself the way she did. (p. 1026-1027)

> From her perspective, it would be my opinion that this was the only course available to her that she eventually took... it was a reasonable apprehension from her point of view taking into account the years of previous threats, violence and abuse and taking into account the serious abuse of that particular night and the changes that she saw in him in escalating violence, and particularly the escalating sexual violence of that night and the threat of sexual assault to her daughter. (p. 1027)

The preceding quote shows that Dr. Glancy believed her perceptions were reasonable considering the abuse she had suffered. He also discussed the issue of imminence in his testimony, deferring legal expertise to Justice Chadwick:

> ...she did not believe that he would kill her imminently right then. Obviously he had gone back to bed. She didn't believe that he was on his way down with a shotgun to kill her, and I think His Honour who is the legal expert in this court will explain to you the concept of imminent belief and how that may be attenuated by battered woman syndrome, according to Supreme Court decisions, but... she did not believe that he was on his way down to kill her right at that time. (p. 1027-1028)

Dr. Glancy confirmed in cross-examination that Lilian Getkate did not believe that her husband would kill her during the incident, later that night, or even the following morning. The threat of death "was not imminent" (p. 1096) but "she thought that the time was coming when he would kill her" (p. 1095).

After offering his opinion with regard to Lilian Getkate's perceptions at the time of the incident and his assessment of her reaction to these perceptions, Dr. Glancy stated that "...the jury has heard the totality of the evidence regarding that, and I'm sure can come to their own decisions" (p. 1033). He claimed that "...the more recent court decisions have urged us to look at individual women who are in this situation and their

individual stories and perceptions, and how that may go to the criminal responsibility at the time" (p. 1048). Again, during cross-examination, Dr. Glancy noted that "...the Supreme Court has recently pointed out to us that we have to look at woman's individual experiences in these cases" (p. 1086). These statements serve to educate the jury about the criminal justice system's changing response to cases such as this one and to encourage the jury to consider this in their decision.

2. Dr. Wendy Cole (Defence Witness)

Dr. Wendy Cole testified on behalf of the defence on the morning of Tuesday, September 29, 1998. The court heard her testimony after that of Dr. Graham Glancy who was also testifying for the defence. Dr. Cole's curriculum vitae was filed as Exhibit 50 and her initial assessment was filed and distributed to members of the jury. Although Dr. Cole was first asked to meet with Lilian Getkate to conduct an assessment, she continued to see the accused for therapeutic purposes. Lilian Getkate was referred to Dr. Cole by her family doctor after she was charged with first-degree murder.

2.1 Claims About Expert Qualifications and Credibility

As with Dr. Glancy, Mr. McCann established Dr. Cole's credentials for the court by reviewing her curriculum vitae. She confirmed Mr. McCann's statements before the court and elaborated on some of the work she had done. Mr. McCann's questioning established Dr. Cole's practical and teaching experience as well as her substantive knowledge in the area of intimate partner violence and the Battered Woman Syndrome.

Dr. Cole is a licensed physician with a specialty in psychiatry in the province of Ontario. She completed her residency in the Forensic Unit at the Royal Ottawa Hospital and did a sub-specialization residency in family and child psychiatry. She is Staff Psychiatrist and Director of the Acute Care Inpatient Service in the Department of Psychiatry at the Ottawa Hospital Civic Campus. She also assesses victims of domestic violence during psychiatric examinations at the Ottawa Civic Hospital's Emergency Department to identify treatment options and resources for community support. She does similar work as a consultant for the Forensic Services Department at the Royal Ottawa Hospital, where she meets with individuals during forensic assessments who have histories of violence. In her previous work, Dr. Cole was Staff Psychiatrist in the Family Court Clinic at the Royal Ottawa Hospital. She has also worked as a consultant for the Crown's Child Witness Preparation programs in Ottawa and as a consultant and expert witness for the College of Physicians and Surgeons of Ontario and College of Dental Surgeons of Ontario with regard to sexual improprieties of patients by physicians and dentists. Dr. Cole is a member of the Ontario Review Board where she attends hearings for mentally disordered offenders to determine whether they should continue to be institutionalized or whether they are fit to be released into the community.

In addition to her practical experience, Dr. Cole lectures on the subject of child sexual abuse and custody assessments in the Faculty of Law at the University of Ottawa. She has also taught in the Faculty of Medicine at the University of Ottawa on a variety of subjects, including interviewing techniques (the sexual history), healthy sexuality, and domestic violence since 1994. Dr. Cole has lectured to medical students about interview skills and mental status examinations. She also lectured to residents in psychiatry at the

University of Ottawa about women's issues, including domestic violence and sexual abuse of patients by physicians.

Dr. Cole delivered a presentation about domestic violence at the annual family medicine update course at the Ottawa Civic Hospital in 1998 and another entitled 'Violence Towards Women' in an interview with Newsday News in Ottawa in 1992. She gave a workshop entitled 'Role of the Family Court Clinic in Custody Assessments' at the Ottawa Jewish Community Centre in 1990 that addressed the experience of divorce. Dr. Cole has pursued her interest in intimate partner violence in her work for the Family Court Clinic, the Forensic Department at the Royal Ottawa Hospital, and the in-patient unit at the Ottawa Civic Hospital. She has been qualified as an expert in hearings about abuse of patients by doctors and is accepted in this trial as an expert in the field of psychiatry with a specialty or sub-specialty in the area of domestic violence.

Dr. Cole noted that she has "never testified in criminal court as an expert in the area of battered woman syndrome" (p. 1144) and that, although she has testified numerous times in family and civil court hearings, she has never before "come to criminal court to testify on the battered woman syndrome" (p. 1144-1145). Regardless, Dr. Cole claimed to be familiar with the term and the criteria associated with the construct. She stated: "it is a term that I wouldn't use in my clinical work" (p. 1144). She has taught students about the Battered Woman Syndrome in her courses and assessed women who meet the criteria for the syndrome. In her clinical work, she deals with intimate partner violence, including the Battered Woman Syndrome. She claimed to be confident in her ability to identify the criteria that make up the syndrome and to assess

women based on these criteria and said she had done this several times in her clinical work.

2.2 Claims About the Battered Woman Syndrome

Dr. Cole claimed that the Battered Woman Syndrome is "...a descriptive term that is present in the literature by some excellent investigators in the area" (p. 1144) and that "it is not a diagnosis that is given to a patient" (p. 1144). She did not go into great detail in defining the term because she was aware that Dr. Glancy had addressed the court the previous day. She did discuss the cycle of violence, however, stating that most women "...at least initially, they hope it will improve. That is the cycle of violence. They hope it will improve" (p. 1160). In the third phase of the cycle of violence, she said, "often the partner is initially sorry. They will express contrition which gives the wife hope that things will improve..." (p. 1160). In Dr. Cole's experience, battered women tend to minimize the violence and the abuse "goes on for quite some time in most cases before the victim will leave or consider taking some sort of action against their partner" (p. 1160).

Dr. Cole spoke about the criteria that make up the Battered Woman Syndrome, "...a term that was promoted by Lenore Walker, Dr. Walker..." (p. 1145). She specified these criteria at length:

> ...The individual should exhibit a very devastating, very demoralized personality, which is to say as a result of chronic violence in the home situation they now exhibit extreme submissiveness, chronic anxiety, self-depreciation [sic], self-loading [sic], self-abasement. They see themselves as highly under-valued, and that is the result of the chronic abuse, be it verbal, psychological forms of abuse, or physical abuse, or sexual abuse. (p. 1145-1146)

Dr. Cole went on to discuss the cognitive distortions that result from these symptoms. She emphasized that battered women are not out of touch with reality or psychotic but that they believe they are very isolated and "that nobody would be there to rescue them... or assist them in leaving the situation" (p. 1146). She suggested that this leads to a "profound sense of hopelessness" (p. 1146). In addition, she claimed that battered women believe that their abusers are all-powerful and that they have absolute control over the women's lives. Dr. Cole agreed with Ms. Parfett during cross-examination that violence must occur several times before they are considered battered women and that it usually occurs several times before women leave. Battered women may also have a hard time leaving their abusers because they often lack self-confidence.

Many of the criteria for the Battered Woman Syndrome are found among the criteria for Post-traumatic Stress Disorder and depression. Dr. Cole noted that these mental disorders are DSM diagnoses and went on to explain them in more detail. Dr. Cole noted that many people suffering from PTSD "exhibit features of what is called hyper vigilance" (p. 1140-1141). She claimed that the Battered Woman Syndrome fits into the DSM under the description for chronic PTSD. During cross-examination, she clarified that chronic and complex PTSD are distinct constructs:

> Complex PTSD is the other terminology that is used for battered woman syndrome, and that is exclusively for use in conditions where women have been or where anyone has been subjected to domestic violence. Chronic post-traumatic stress disorder is a constellation of systems that are present following some traumatic event. That trauma could include domestic violence, but it could also include other forms of assault. (p. 1164)

2.3 Claims About Lilian Getkate and the Battered Woman Syndrome

Based on what Lilian Getkate told her, Dr. Cole stated that the defendant fit the criteria for the Battered Woman Syndrome. Dr. Cole told the court that Lilian Getkate reported verbal, physical, and sexual abuse at the hands of Maury Getkate. Dr. Cole's notes indicate that in her interview, Lilian Getkate reported being pulled upstairs by the hair, having her face shoved in the bed mattress, and she said that Maury Getkate had been sexually aggressive. He sometimes left bruises but denied inflicting harm on her. Dr. Cole indicated that when she met with Lilian Getkate, the defendant seemed to understand that her husband's sexual behaviour was abusive. However, Dr. Cole's notes suggest that only at the time of their interview did Lilian Getkate understand that she had felt trapped in her relationship. Dr. Cole's notes also indicate that Lilian Getkate had always hoped the relationship would improve because she was committed to her marriage.

According to Dr. Cole, Lilian Getkate had low self-esteem, was very depressed and submissive, and was afraid of her husband. "She believed this man to be all powerful and all controlling in her life" (p. 1200). Dr. Cole stated that "by her own report, [Lilian Getkate] indicated that the abuse had escalated throughout the relationship both in frequency and in the different forms of abuse that was occurring" (p. 1157-1158). Lilian Getkate's low self-esteem was particularly noticeable to Dr. Cole, but she clarified in cross-examination that low self-esteem "is not exclusive to a woman who has suffered physical abuse" (p. 1165).

Dr. Cole conducted an Initial Assessment of Lilian Getkate, which is a hospital record that documents "...the history of the presenting concerns, past relevant history, a

mental status examination if you are a psychiatrist, and a clinical diagnosis as well as your proposed plan of treatment" (p. 1134). Dr. Cole noted several symptoms of mental disorder in her initial meetings with Lilian Getkate and claimed that when she first met with her, the accused was "profoundly depressed" (p. 1133). Dr. Cole stated her diagnostic impression or diagnosis: "I felt Mrs. Getkate was suffering from depression, and also from a possible post-traumatic stress disorder of a chronic form" (p. 1138). She also noted: "I was very mindful of the fact that this would likely be entered into court, and so I was cautious in giving a diagnosis of post-traumatic stress disorder..." (p. 1141) but that "...I would now state without any hesitation that I felt she was suffering from a post-traumatic stress disorder..." (p. 1142).

Lilian Getkate was accused of being inconsistent in the accounts of her relationship with Maury Getkate and the night of the incident that she gave to the three psychiatrists who testified at her trial. Dr. Cole addressed this issue, defending Lilian Getkate's alleged inconsistency by typifying this occurrence among victims of intimate partner violence. Regarding the possibility that she was privy to information about the abuse that was not recounted to Dr. Bradford and Dr. Glancy, Dr. Cole claimed that "for somebody who has been abused, it is often very difficult to give details of such intimate activities in a home, and it is sometimes recognized that it is easier for a female to talk to another female" (p. 1153).

She also suggested that if Lilian Getkate was displaying as many symptoms of depression when she met with Dr. Bradford as she was when she met with Dr. Cole, then she may not have been able to provide Dr. Bradford with as much information. Dr. Cole again typified Lilian Getkate's experiences, noting that violence is so common in abusive

relationships that battered women often find it difficult to remember specific details and accurately identify when they occurred. Dr. Cole did not blame Lilian Getkate for being inconsistent but rather, suggested "there is also the possibility that somebody is lying" (p. 1153). She described Lilian Getkate as consistent and reliable but ultimately deferred the responsibility of judging the defendant's credibility, and presumably that of the expert witnesses too, to the court.

2.4 Claims About the Law's Response

Dr. Cole suggested in her testimony that some women are not taught about healthy relationships and intimate partner violence. She claimed:

> One has to keep in mind as well the possibility that the individual may not have realized that activities going on in the relationship were of an abusive nature. That sometimes does occur where an individual has become so isolated or so conditioned to believe that this is what people do in a marriage, they actually as hard as it is to image they actually in today's day and age, don't recognize that that is abusive behaviour. (p. 1171)

This can be especially problematic for people who have not had very many relationships or experiences because "they don't know what goes on in other relationships" (p. 1196). Even when battered women do know they are being abused, they face numerous barriers when considering leaving their abusers. Dr. Cole spoke about the reasons women do not leave abusive relationships:

> For a woman to leave, first of all if children are involved, most women if they have been subjected to abuse want to take the children with them. They worry about leaving the children behind. To do that, we can talk about shelters that are available. We can talk about resources in the community. They are poor, poor options, and so the woman who is likely to successfully leave, initially very quickly, is one who has the financial and the emotional and the support of resources to do it, and frankly there just aren't enough women that fit that category. (p. 1161)

Even when resources are available, Dr. Cole claimed that in her experience, "with most of the women that we see in these relationships, they decline the offer of counseling, and they decline the offer to move to a shelter when they are seen in the emergency" (p. 1130). Many of these women may not perceive the proposed options as viable because of the practical problems listed above.

There appeared to be several factors keeping Lilian Getkate from leaving her abusive relationship. For example, Maury Getkate "had made threats of sorts to her that if she ever tried to leave he would get custody of the children, that he would harm other members of her family, in particular her parents" (p. 1148). Even though she had some social support, Lilian Getkate "truly felt that she could not escape" (p. 1148), especially without losing her children. Lilian Getkate was afraid that if she remained with her husband, he would abuse her daughter, continue to physically abuse her son, and continue to abuse her. Dr. Cole confirmed Ms. Parfett's statement that "the only thing that would make her leave was if [Maury Getkate] had sexually assaulted the children" (p. 1188).

Dr. Cole claimed that "given what she described occurred in the relationship, then for her it would be a reasonable conclusion that escape would be either very difficult or impossible" (p. 1158). In cases where women perceive no alternatives and kill their abusers, Dr. Cole noted that in order to use a defence in court,

> ...the issues that usually have to be addressed as well are why the individual feels that they could not leave the relationship, and what must have been different at the time of an offence if the victim then chooses to harm the perpetrator, what was different preceding that incident that triggered, if you will, such an extreme reaction. (p. 1145-1147)

During cross-examination, Ms. Parfett suggested that since Lilian Getkate has expressed remorse, then that is an indication that she feels there was no excuse for what

she has done. Dr. Cole claims that it is "for the court to decide" (p. 1178) whether or not Lilian Getkate should be excused for the crime she committed.

3. Dr. John Bradford (Crown Witness)

Dr. John Bradford testified for the crown on the morning of Tuesday, September 22, 1998. His curriculum vitae was filed as Exhibit 26 and his report as Exhibit 27. Dr. Glancy was the first expert psychiatric witness to testify before the court in this case. Dr. Bradford conducted a preliminary, exploratory interview with Lilian Getkate at a detention centre six days after she shot her husband in order to assess her fitness to stand trial and criminal responsibility.

3.1 Claims About Expert Qualifications and Credibility

Dr. Bradford is a forensic psychiatrist and Clinical Director of the forensic program at the Royal Ottawa Hospital. He is also the Director of the Sexual Behaviours Clinic at the Royal Ottawa Hospital. Dr. Bradford received his medical degree from the University of Capetown and completed his residency in psychiatry. He then completed a fellowship, extra training in forensic psychiatry, at the University of London and Maudsley Hospital in England.

In addition to his practical work, Dr. Bradford has been teaching at the University of Ottawa for approximately 20 years. He began as an Assistant Professor when he came to Canada in 1978 and continues to teach in the Department of Psychiatry in the Faculty of Medicine. He is also the head of the forensic psychiatry division at the University of Ottawa. Dr. Bradford has published a significant number of articles in the field of

forensic psychiatry. He has also received several awards for his work, the most recent of which was an outstanding service award from the Academy of Psychiatry and the Law, in 1995.

Most of Dr. Bradford's work has been in the area of forensic psychiatry dealing with issues of insanity, fitness to stand trial, dangerousness, violent offenders, and young offenders. Although his own particular specialty has been in the area of sexual deviance, Dr. Bradford indicated that "...most forensic psychiatrists try to stay within the general parameters of forensic psychiatry" (p. 340). During cross-examination, he confirmed that he had never done any work or published any articles directly related to the Battered Woman Syndrome.

In qualifying his expertise, Dr. Bradford clarified for the court that he is not a lawyer. He has provided expert testimony in court on several occasions for both the Crown and the defence, and has testified on the Battered Woman Syndrome in two cases. He has also written reports in other cases where he was not required to testify. He has previously been accepted as an expert on the subject of the Battered Woman Syndrome in court.

3.2 Claims About the Battered Woman Syndrome

Dr. Bradford defined the Battered Woman Syndrome for the court, noting that this definition comes from Lenore Walker's description of the syndrome:

> ...a situation where a person is the victim of at least two cycles of battering, and the battering involves a buildup or tension phase where in fact the perpetrator is in a situation of tension. This is then followed by an acute episode of battering, and then after that there is the loving contrition type phase, and by definition a person has to go through at least two cycles of that type of battering. (p. 330)

Upon cross-examination, he agreed that the loving contrition phase can be characterized by simply "...a reduction in the tension" (p. 359). Dr. Bradford claimed that "the importance of the syndrome, however, is the effects that it has on the victim, the woman..." (p. 330) and identified some of these effects, including a loss of self-confidence, social isolation, and financial control. He claimed in cross-examination that "...usually the person who is being abused doesn't have financial control, meaning not control of the bank accounts..." (p. 385-386) and that "it is described in a battered woman syndrome as part of the control including financial control" (p. 385). Dr. Bradford emphasized again in re-examination that "financial control is an important part of the social isolation" (p. 378). He also told the jury that

> there is a term which is talked about of learned helplessness where a person, the woman who is battered gets to the point where she is helpless, psychologically controlled, becomes a punching bag, if you like, and that is an important aspect of the syndrome, usually her life being controlled financially, socially, emotionally, etc. (p. 331)

D. Bradford claimed that social isolation indicates that "the level of the battered woman syndrome and the control is more significant" (p. 376). He stated that "...the stronger the control the more social isolation, the more severe the battered woman syndrome" (p. 376-377). He noted too that after years of abuse, women feel "trapped in the relationship; they feel helpless" (p. 371). Dr. Bradford claimed in cross-examination that it is typical for battered women to fear that their abusers are "in such a powerful situation that they would be able to be in complete control..." (p. 370). Battered women also develop "emotional difficulties" (p. 331) as a result of the abuse suffered. Dr. Bradford claimed that "technically it is described as a complex post traumatic stress disorder" (p. 331) and may include some elements of depression and low self-esteem. He

agreed with Mr. McCann during cross-examination that it is typical for women suffering from the Battered Woman Syndrome to blame themselves for what is occurring but suggested that this is also common and expected in non-violent relationships when there are problems.

In cross-examination, Dr. Bradford agreed with Mr. McCann's statement that "...one of the features of the battered woman syndrome is sort of a down-playing of violence" (p. 351). He also claimed that, with regard to sexual abuse, "...there may be some reluctance to speak about it under certain circumstances" (p. 352) and "as a broad issue, could there be a reluctance to discuss significant sexual abuse, the answer to that is yes" (p. 352). Dr. Bradford suggests that this reluctance to discuss sexual abuse may stem from a variety of factors including embarrassment.

Dr. Bradford suggested that the woman's loss of confidence escalates and may result in the woman hitting her partner back or even killing him. He claimed that "about 20% or 30% of women who would fit the definition would not be complete passive recipients; they would fight back" (p. 330). According to his testimony, after the escalation, there is "something unique on the night in question which means that it is different from the battering that occurred beforehand, and a perception that her life was in danger, and this then leads her to fight back..." (p. 331) resulting in the batterer's death.

3.3 Claims About Lilian Getkate and the Battered Woman Syndrome

When Dr. Bradford evaluated Lilian Getkate, he claimed to have had the Battered Woman Syndrome framework in mind. His assessment of Lilian Getkate did not confirm that she was socially controlled or isolated by her husband. He agreed during cross-

examination, however, that it is not unusual for battered women to have children and to have contacts with other people involved in their children's lives. Dr. Bradford maintained that the element of social control or isolation was not evident in Lilian Getkate's history and most of the control appeared to be verbal rather than social. For example, Maury Getkate would "talk to her in a very controlling voice, such as you have to listen to me" (p. 313). During re-examination, Dr. Bradford claimed that "...although I agree there is battered woman syndrome present, I think this goes to the degree of it" (p. 377). He again noted that not all of the elements of the syndrome were present:

> Again in terms of the control, the social isolation, and again it goes to the degree of battered woman syndrome, that certainly in the severe cases, even moderate cases, the social isolation is such that they have almost no social contacts outside of the home, which is not the case here. (p. 377)

Also, "...there were threats again of leaving and taking the kids with him" (p. 319), which suggests that threats of this sort had occurred before or were recurrent in the Getkates' relationship. Dr. Bradford claimed in cross-examination that there were elements of what Mr. McCann called the "classic battered spouse situation" (p. 365) in the Getkates' relationship, particularly the control and put downs that Lilian Getkate endured. Some of the other facets of social control that seem to be missing in Lilian Getkate's case, according to Dr. Bradford, are a lack of control over finances and therefore a lack of power, and a lack of access to police and lawyers. These and several other factors were interpreted by Dr. Bradford to be "...against the social isolation as part of the control phenomenon with battered woman syndrome" (p. 376).

Dr. Bradford noted that when couples are having marital problems, "pushing and shoving is not uncommon" (p. 327) and that it is important to assess the type and severity of the acts in order to establish whether or not it is abuse. He claimed that the specific

incidents reported by Lilian Getkate are unusual and would be considered physical abuse. Dr. Bradford told the court that Lilian Getkate "was never punched in the sense of a deliberate punching episode" (p. 315) but did describe several incidents of physical abuse that resulted in bruises. He noted that "she didn't give me a history of going to a hospital and seeking out medical treatment. So that the injuries were not sufficient for that..." (p. 327). Dr. Bradford did comment on the size differential between Lilian Getkate and her husband, saying, "...he was about six foot two, weighing over 200 pounds. Mrs. Getkate being much smaller than him so that any pushing or shoving or physical abuse on his part certainly was significant, given her size" (p. 314). He agreed in cross-examination that Maury Getkate's violence would have been quite frightening considering this size difference.

Dr. Bradford described the pattern of abuse apparent in what Lilian Getkate told him during her interview:

> ...There were times when there was tension. It was far worse and with pushing and shoving as part of the physical aspects of that, and then a couple of incidents where there was violence beyond that, and the impression was that it did occur in cycles. (p. 360)

According to Dr. Bradford's testimony, there was also an increase in the frequency of physical abuse, supporting a pattern of escalating violence in the Getkates' relationship. Dr. Bradford also touched on other forms of abuse, saying, "...clearly there was physical and verbal and emotional abuse" (p. 323). He made it clear to the court that, based on the information gathered during his interview with Lilian Getkate, he was not aware that she had suffered any sexual abuse: "I asked her if there was any sexual abuse and she said no there wasn't" (p. 323). The issue of sexual assault became one of particular interest in the testimonies of Dr. Glancy and Dr. Cole because Lilian Getkate

revealed in her interviews with them that she suffered significant sexual abuse from her husband. Dr. Bradford claimed that if the incidents described to Dr. Glancy and Dr. Cole were true, then Lilian Getkate probably suffered from the Battered Woman Syndrome.

Dr. Bradford noted that Lilian Getkate was not psychotic or out of touch with reality but that "she was tearful, despondent, sort of her mood was depressed" (p. 323). He observed several symptoms of major depression in the accused and suggested that "...she had been depressed for some time" (p. 323). Dr. Bradford claimed that "from a diagnosis point of view, I felt she did suffer from a major depression and this was a major depressive episode" (p. 324). He related this diagnosis to intimate partner violence, saying that "...in general terms, some type or degree of depression in relation to marital discord is quite common" (p. 325). It was not clear to Dr. Bradford that Lilian Getkate suffered from chronic PTSD.

3.4 Claims About the Law's Response

When Dr. Bradford met with Lilian Getkate, he told her that he was a forensic psychiatrist and that the purpose of his examination was to assess her fitness to stand trial and criminal responsibility. He claimed "that because I had been retained by the crown it doesn't necessarily mean that I would form an opinion that was along the lines of what the crown was trying to put forward" (p. 305). He also told her that what she said could be included in his opinion but that he would attempt to make an independent opinion. Dr. Bradford claimed that forensic psychiatrists are allowed to give their opinion on issues of criminal responsibility but that "the ultimate decision is always going to be with either

the judge or the jury in terms of what the final decision is with regards to criminal responsibility" (p. 304).

Dr. Bradford claimed that psychiatric assessments of offenders are very important in establishing their criminal responsibility:

> ...People with serious mental disorder before they commit an offence, usually have significant signs and symptoms of that mental disorder, and that becomes important in the sense that the possibility can be that a person can malinger or pretend to be mentally disordered conveniently as an excuse for their behaviour. (p. 336)

He revealed that in his examination of Lilian Getkate, his goal was

> ...To form an impression as to what the abuse was. Was there a pattern to the abuse, how severe it was, was there any escalation prior to the night in question, was there any specific abusive incident in relation to the night in question, because those are the kinds of issues that become relevant if a person is first of all a battered woman, and secondly without being a battered woman, may have anything to do with her behaviour at the time of the incident. (p. 329)

Dr. Bradford claimed that Lilian Getkate was not "afraid of being hurt seriously, but afraid of the future and the abuse that was going on" (p. 316). He said that she had told him that there were "threats about the children, what would happen to the children if there was a break-up in the relationship" (p. 317). Again, Dr. Bradford noted that "...there had been threats that if they separated he would take the children and live somewhere where she wouldn't be able to find them" (p. 318). Dr. Bradford claimed that "...the more serious events seemed to be some time prior to the events on [the night she killed her husband]" (p. 332). However, he later stated that

> there did not appear in the history that she gave me that there either was an escalation just prior to [the night she killed her husband], that there didn't appear to be any specific incident which was unusual in the context of either verbal or physical abuse on that particular night. So, there was nothing unique about it on that particular night, and she didn't give me a history of, which really flows out of that, of anything specific to that night that made her fear that her life was in

> danger. So there were those elements missing from what I regard as essential for battered woman syndrome defence. (p. 333)

Dr. Bradford agreed with Mr. McCann that the Battered Woman Syndrome is used in criminal law to explain to someone who is unfamiliar with intimate partner violence, why battered women stay in abusive relationships. In this case, Lilian Getkate had allegedly met with a lawyer regarding separation. Dr. Bradford claimed that

> ...From what I know, lawyers give certain advice about various legal protections, and I would assume from a lawyer who deals with family matters, this would include issues about how to go to a woman's shelter if necessary, how to provide legal protection, so that an abusive partner would not get the children. In fact, in a separation issue, that would, any evidence of that from a woman would be a significant barrier to any perhaps even access, but certainly custody. (p. 377-378)

The underlying message in this quote from Dr. Bradford's testimony is that if Lilian Getkate was able to speak to a lawyer, which she claims to have done, and the lawyer provided her with such information, which he presumably should have done, then she should have been aware of her options and was therefore not justified in her lethal response to the violence.

4. Claims-making About the Battered Woman Syndrome in Court

Now that the expert testimonies from this case have been analyzed individually, I will engage in a cross-expert analysis to examine some of the broader themes apparent in the expert evidence. The following section will examine claims about expert qualifications and credibility, claims about the Battered Woman Syndrome, claims about Lilian Getkate and the Battered Woman Syndrome, and claims about the law's response across the three expert witnesses who testified at this trial.

4.1 The Claims-makers: Expert Witnesses

It is clear from the testimonies analyzed in this case that the court places a strong emphasis on expert witness qualifications and credentials. As hypothesized, all three experts were psychiatrists; however, their education and training, work experience (e.g., practical, teaching, consulting), and professional experience (e.g., publications, presentations) in such areas as intimate partner violence, the criminalization of women, sexual offending, and the Battered Woman Syndrome differed significantly.

Dr. Glancy, for example, had practical experience with both criminalized women and female victims of intimate partner violence. He also had experience with intimate partner violence perpetrators and sexual offenders. He had published and presented on the subject of the Battered Woman Syndrome and previously testified in court on the syndrome. Dr. Cole had considerable experience treating female victims of intimate partner violence and teaching on the subject of domestic violence. Her experience was broader in the sense that she had interests in family law and violence against women, generally. Dr. Cole had never before testified in court on the Battered Woman Syndrome. The Crown's expert witness, Dr. Bradford, had focused his work on sexual offenders, young offenders, and violent offenders. He told the court that he did not have experience or publications related to the Battered Woman Syndrome but that he had previously testified in court on the subject.

It appeared that Dr. Glancy and Dr. Cole had significantly more practical and academic experience in the field of intimate partner violence than Dr. Bradford, whose credibility in this area came from having previously testified on the Battered Woman Syndrome in court. It would appear that, as hypothesized, all three witnesses had some

form of expertise in the field of intimate partner violence. However, the expertise of the witnesses testifying on behalf of the defence was quite substantial, whereas the extent of Dr. Bradford's expertise in this area was less well established.

It may be natural to presume that experts testifying for the Crown and the defence are adversaries because they are claims-makers allied with opposing parties in an inherently adversarial process. In this case, however, both Dr. Glancy and Dr. Cole had worked with Dr. Bradford in the past and all of the experts noted their relationships with one another in their testimonies. They made claims about their own as well as each other's qualifications in court, referred to each other's assessments of Lilian Getkate to support their own.

Dr. Glancy stated that he had co-authored a paper with Dr. Bradford, demonstrated that he was familiar with Dr. Bradford's work, and confirmed Dr. Bradford's expertise in the area of sexual sadists. He also referred to Dr. Bradford's and Dr. Cole's assessments of Lilian Getkate to confirm some of his claims. According to Dr. Glancy, the fact that the account given to him by Lilian Getkate had been given to Dr. Cole and given in part to Dr. Bradford helped him validate her account "...to a great extent" (p. 1115). He later referred to Dr. Cole's diagnosis of Lilian Getkate to support his own assessment of Post-traumatic Stress Disorder.

Dr. Cole confirmed in her testimony that she had worked with Dr. Bradford when he was the director of the Forensic Unit at the Royal Ottawa Hospital. When asked about the Battered Woman Syndrome, Dr. Cole expressed confidence in Dr. Glancy's knowledge on the subject by replying: "I'm sure you are familiar with the criteria if Dr. Glancy was here yesterday" (p. 1145). She made claims about the defendant's credibility,

based on Dr. Glancy's report that included the results of psychological tests administered to Lilian Getkate.

Upon cross-examination, Dr. Bradford claimed that he knew both Dr. Glancy and Dr. Cole very well. He also confirmed Dr. Glancy's expertise in the area of spousal abuse, agreeing that Dr. Glancy had spent much of his time as a forensic psychiatrist working on and writing about this topic. Dr. Bradford went on to say that "Dr. Cole was trained in the division that I run and was, did a fellowship including a research fellowship, that I supervised her..." (p. 361). He confirmed her expertise in the area of intimate partner violence as well: "...she specialized in the Family Court Clinic component of our division which has to do with mostly psychiatric issues, apply to the family, domestic issues, divorce, custody, child abuse, etc., those areas" (p. 361). He agreed with Mr. McCann's statement that Dr. Cole was "well experienced in the area of domestic abuse" (p. 361).

Just because the expert witnesses appeared to have collegial relationships with one another did not mean that all of their claims were consistent or that they never questioned each other's credibility. Dr. Glancy identified some of the limitations of one of Dr. Bradford's studies rather than blindly agreeing with his findings during cross-examination. He also asked Lilian Getkate in his interview "...whether Dr. Cole had put words in her mouth about [the Battered Woman Syndrome] inadvertently when discussing it with her" (p. 1055-1056). Although this inquiry might have been intended to assess Lilian Getkate's credibility, it could have affected the jury's perception of Dr. Cole as a credible witness.

The expert witnesses acknowledged that their knowledge was limited, especially with respect to Lilian Getkate, her relationship with Maury Getkate, and the night of the incident. Dr. Glancy, in particular, identified the limitations of all three experts' knowledge based on their varying goals and the conditions under which they interviewed Lilian Getkate. He claimed that, because Dr. Cole's knowledge came from therapy sessions with the accused, "she [Lilian] may have relaxed a little bit more" (p. 1115). Dr. Glancy also claimed that "she intends to diagnose a disorder and then set about the appropriate therapy for that disorder. Her notes are not designed to elicit facts" (p. 1030). He made claims about the limitations of Dr. Bradford's knowledge due to the fact that his interview with Lilian Getkate was

> ...a brief exploratory interview where he had to explore a number of issues, so it was a bit rushed and the terrible conditions of the detention centre, and from a woman who has been through enormous trauma of various types and was still really living those trauma at the time. (p. 1030-1031)

Dr. Glancy also suggested that Dr. Bradford may not have been privy to the same information as himself and Dr. Cole because Dr. Bradford was representing the Crown and Lilian Getkate knew this. He claimed that, despite these limitations, Dr. Bradford's interview with Lilian Getkate occurred closer to the time of the offence and thus had several advantages. Finally, Dr. Glancy both acknowledged and excused his own limited knowledge in this case, claiming:

> I have less excuses than they do, and I attempted to be a little more meticulous, but, you know, we had two days with her, but we had a lot of stuff to get through, and there is never enough time, and if you ask me now, yes, I wish I had really gone back and got the times of each incident very clearly, but the fact is that is not particularly my training, that is not the purpose of my examination, and it wouldn't change, I don't see it as greatly changing my opinion, the dates that things were changed... (p. 1031)

Dr. Cole noted the limitations of her knowledge, claiming that because she was fulfilling a clinical role and the other expert psychiatric witnesses had forensic roles, "...Dr. Bradford and Dr. Glancy both would have been much more specific about the details of the offence..." (p. 1173). With regard to Dr. Glancy's report, she claimed, "...I saw what I would have expected, a very complete review of the domestic relationship and the events of that evening, with far more detail than I would have been after..." (p. 1198). She even went on to say that Dr. Glancy's report had "...possibly more detail than Dr. Bradford would have been able to get, given the traumatized state of the patient" (p. 1198). Dr. Bradford agreed with Mr. McCann, upon cross-examination, that Lilian Getkate had disclosed more information to Dr. Cole than to himself and that this was not surprising given Dr. Cole's clinical relationship with the accused.

4.2 Claims About the Battered Woman Syndrome

The Battered Woman Syndrome may be raised in court in order to substantiate a claim of self-defence in cases of female-perpetrated intimate partner homicide. Given that the syndrome supports a legal defence, it is perhaps not unreasonable to assume that an expert witness retained by the defence would focus more of his or her attention on the syndrome than would an expert witness retained by the Crown. In the case under analysis, Dr. Glancy and Dr. Cole went into much more detail about the Battered Woman Syndrome than did Dr. Bradford. Dr. Glancy's significant experience and knowledge of the Battered Woman Syndrome were evident in his testimony in that he went into even more detail than did Dr. Cole when describing the syndrome for the court. It is possible,

however, that Dr. Cole had significant knowledge but limited her description of the syndrome because Dr. Glancy had explained it so thoroughly the day before she testified.

As hypothesized, all three expert witnesses referred to Lenore Walker when describing the Battered Woman Syndrome. Dr. Glancy described her as "...the definitive researcher and writer in this field..." (p. 962) and defined the Battered Woman Syndrome using "Dr. Walker's definition" (p. 962). He briefly outlined her research, claiming that she "...looked at a series of women who were abused within relationships and attempted to define the characteristic responses of these women" (p. 962). He noted that Walker had coined the pattern of violence in abusive relationships the 'cycle of violence' and that she described the myriad forms of abuse in her "ground-breaking research" (p. 973). Dr. Glancy also referred to Lenore Walker 's research when discussing thoughts and fantasies characteristic of severely battered women that are peripheral to the definition of the Battered Woman Syndrome. Dr. Cole only referred to Walker's research once when she claimed that the Battered Woman Syndrome "...is a term that was promoted by Lenore Walker, Dr. Walker..." (p. 1145). Dr. Bradford claimed that the Battered Woman Syndrome was "...described by Lenore Walker" (p. 330). He also confirmed in cross-examination that Walker was indeed the leading proponent of the syndrome and that she discussed the cycle of violence in her work.

The expert witnesses' descriptions of the Battered Woman Syndrome were all in line with Walker's original definition. Dr. Glancy described the syndrome in terms of the perceptions and responses that result from having experienced two or more episodes of violence. He outlined the three phases of the cycle of violence, providing examples of behaviours that are characteristic of each. He highlighted the many forms of abuse,

particularly social control and isolation, and discussed the effects of different kinds of abuse on women. He went further beyond just the Battered Woman Syndrome to describe three batterer personality types. Dr. Cole's description of the Battered Woman Syndrome was less detailed than Dr. Glancy's. She listed various characteristics found among women who suffer from the syndrome and described the kind of cognitive distortions and perceptions that result from chronic abuse. She briefly touched on the cycle of violence in her explanation of why women remain silent about their experiences of abuse and remain in violent relationships. Dr. Bradford described the Battered Woman Syndrome according to Lenore Walker's definition, discussed the cycle of violence, emphasized the negative effects battering has on women, and the reasons why women find it difficult to discuss their abuse. Both Dr. Glancy and Dr. Bradford discussed learned helplessness in their testimonies. Dr. Glancy linked this construct to the work of Seligman who first coined the term and went further to explain the notion of traumatic bonding and Stockholm Syndrome. Dr. Cole did not refer to learned helplessness or traumatic bonding in her testimony.

As hypothesized, the expert psychiatrists linked the Battered Woman Syndrome to a multitude of psychological characteristics and other psychiatric disorders such as depression and Post-traumatic Stress Disorder. Dr. Glancy listed numerous characteristics that together form a psychological profile that describes the typical woman who suffers from the Battered Woman Syndrome. He described battered women as having anxiety, low self-esteem, dependency, poor concentration, aggressive or hostile behaviour, and physical complaints. Dr. Glancy discussed the relationship between the Battered Woman Syndrome and depression as well as complex Post-traumatic Stress Disorder. He agreed

with Ms. Parfett during cross-examination and confirmed upon re-examination that PTSD could result from having committed a murder since this can be a very traumatic event. Dr. Cole did not directly link the Battered Woman Syndrome to the diagnostic construct of depression. She did, however, claim that the syndrome is found under the rubric of PTSD in the DSM-IV and is specifically described by complex PTSD. Dr. Bradford linked depression to marital discord but not directly to the Battered Woman Syndrome. All three experts also discussed depersonalization and dissociation and linked these to Lilian Getkate's actions on the night she killed her husband.

4.3 Claims About Lilian Getkate and the Battered Woman Syndrome

Dr. Glancy did not directly state that Lilian Getkate suffered from the Battered Woman Syndrome. He did, however, make numerous indirect statements suggesting that she suffered from the syndrome. He described the abuse she suffered, identified the symptoms she presented with, and claimed that these were consistent with the Battered Woman Syndrome criteria. During Dr. Cole's testimony, Mr. McCann asked her if, based on her assessment, Lilian Getkate fit the criteria for the Battered Woman Syndrome. Dr. Cole responded affirmatively and later confirmed this for Mr. McCann. Like Dr. Glancy, Dr. Cole made claims about the abuse Lilian Getkate had suffered and the psychological symptoms she presented with in her interview. Dr. Bradford claimed in his testimony that Lilian Getkate's account of her relationship with Maury Getkate was consistent with the cycle of violence. He noted several aspects of Lilian Getkate's story that fit the Battered Woman Syndrome criteria but, ultimately, he felt that there were "...elements missing from what I regard as essential for battered woman syndrome defence" (p. 333). Dr.

Bradford did claim in cross-examination that if the accounts Lilian Getkate gave to Dr. Glancy and Dr. Cole were accurate, then she likely did suffer from the Battered Woman Syndrome.

It appears from the expert testimonies that Dr. Glancy and Dr. Cole were more confident than Dr. Bradford that Lilian Getkate suffered from the Battered Woman Syndrome. Dr. Bradford appeared to have reservations about the extent to which Lilian Getkate fit the Battered Woman Syndrome criteria. Unlike the defence experts, he highlighted several inconsistencies between Lilian Getkate's experiences and those typically observed in women who suffer from the Battered Woman Syndrome.

4.4 Claims About the Law's Response

Because so many women alleged to suffer from the Battered Woman Syndrome report feeling helpless and trapped in their relationships, it seems logical that those experts who believed that Lilian Getkate suffered from the syndrome would also believe that she did not perceive escape as a viable option. In his testimony, Dr. Glancy claimed that "she was more and more concerned that she had no options, she had no choices available to her..." (p. 1013), that "she just felt trapped, powerless, helpless..." (p. 1009), and that she believed "...she had no protection left..." (p. 1026). He suggested that "...there was no options available to her at that time except to defend herself the way she did" (p. 1026-1027) and that Lilian Getkate did not believe a restraining order could offer her much protection. Similarly, Dr. Cole claimed that Lilian Getkate "...truly felt that she could not escape" (p. 1148) and that "given what she described occurred in the relationship, then for her it would be a reasonable conclusion that escape would be either

very difficult or impossible" (p. 1158). Dr. Bradford made no such claims that Lilian Getkate felt trapped or helpless in his testimony. This discrepancy between the claims of the defence's expert witnesses and the Crown's expert witness is not surprising considering the former were employed to explain that Lilian Getkate's actions were reasonable and justified.

Dr. Glancy was the only expert witness to discuss the history of the law's response to intimate partner violence. He claimed that "...over the centuries spousal abuse has been tolerated or condoned by some societies..." (p. 959) and that in some cultures men could discipline their wives because women were considered to be their husbands' property. He noted that society's response to intimate partner violence has changed significantly since the beginning of the women's movement but that only recently have women been granted the kind of legal protection available to victims of violence at the hands of strangers. He highlighted several changes in the criminal justice system's response to intimate partner violence such as sensitivity training for police officers and physicians, collaboration with victim advocacy groups, as well as changes in court policies and charging practices. Dr. Glancy claimed that courts provide more services and protection to battered women and meet these women's needs more today than in the past. Dr. Cole did not make any claims about the law's response to intimate partner violence and homicide. Dr. Bradford said very little about the criminal justice system's response to intimate partner violence in his testimony. He merely stated that, to his knowledge, lawyers provide advice to battered women about safe housing, custody, and other related issues.

The hypothesis that expert witnesses would make recommendations about the outcome of the trial was not supported in the testimonies. The expert witnesses neither claimed to have legal expertise nor made bold claims about what verdict would be appropriate in this case. Dr. Glancy claimed in his testimony that, although Lilian Getkate did not perceive an imminent threat of serious injury or death, her perceptions and response were reasonable. He deferred legal expertise to Judge Chadwick at one point and claimed that it was the jury's responsibility to make a decision based on the evidence presented. Dr. Cole also suggested that Lilian Getkate's perception of limited alternatives was reasonable and claimed that the degree to which her response can be excused is a decision for the court to make. Dr. Bradford claimed in his testimony that the judge or jury is ultimately responsible for making a decision about the extent to which the defendant is criminally responsible.

5. Claims-making About the Battered Woman Syndrome in the News Media

Sixteen newspaper articles were analyzed to determine: (1) who made claims about the Battered Woman Syndrome with respect to the case of Lilian Getkate and if these claims-makers were experts, what kinds of experts they were; (2) how the Battered Woman Syndrome was described and defined in the news media; (3) how claims about the Battered Woman Syndrome were related to Lilian Getkate; and (4) what claims were made about the law's response to intimate partner violence and homicide. All of the articles cited in this section were printed in *The Ottawa Citizen* (*OC*) or *The National Post* (*NP*).

5.1 The Claims-makers: Experts and Non-experts

It was hypothesized that the majority of claims made about the Battered Woman Syndrome would be made by expert psychiatrists and that journalists would quote the expert psychiatrists' testimonies from the trial. It was also expected that some of the claims about the Battered Woman Syndrome would be quotes from the defence lawyer and Crown attorney since the syndrome is used to substantiate a claim of self-defence in court. Claims about the Battered Woman Syndrome were expressed as coming directly from the psychiatrists who testified at trial in seven of the articles. More often than not, claims about the Battered Woman Syndrome were linked to an unnamed psychiatrist. For example, "A former Ottawa woman who shot her husband dead while he slept meets the criteria of battered spouse syndrome, a psychiatrist testified yesterday" (*OC,* Sept. 30, 1998) and "Two psychiatrists who interviewed the accused woman have testified that Ms. Getkate fit the criteria of battered spouse syndrome" (*OC,* Oct. 1, 1998). Claims about the Battered Woman Syndrome were sometimes published as quotes from particular expert psychiatric witnesses.

Claims about the Battered Woman Syndrome were linked to Ms. Parfett, the Crown attorney in this case, in two articles and to Mr. McCann or 'the defence' in thirteen articles. The following claims about the Battered Woman Syndrome were linked to the Crown: "Assistant Crown attorney Julianne Parfett suggested yesterday that the syndrome is 'more a sociological phenomenon than a psychiatric diagnosis'" (*OC,* Sept. 29, 1998); "Assistant Crown attorney Julianne Parfett nonetheless said that the jury's refusal to acquit was a rejection of Mrs. Getkate's battered-wife-syndrome defence" (*OC,* Oct. 5, 1998a). The following references to the Battered Woman Syndrome were linked

to claims made by Mr. McCann, also referred to as 'the defence.' For example, "Mr. McCann in his address depicted Ms. Getkate as a woman suffering from 'battered wife syndrome'..." (*OC,* Sept. 16, 1998); "...Patrick McCann, has said she was emotionally, physical and sexually abused by her husband to the extent that she suffered from 'battered-spouse syndrome' when she killed him" (*OC,* Sept. 25, 1998b); and "The defence claims she should be acquitted because she was suffering from battered wife syndrome and shot him in self-defence" (*OC,* Oct. 2, 1998). One article in the sample was written by Mr. McCann and thus all of the claims about the Battered Woman Syndrome in the article were made by him directly.

In four of the articles, the author made claims about the Battered Woman Syndrome that were not linked to the expert psychiatric witnesses, Crown attorney, or Lilian Getkate's defence lawyer. These can be considered claims made by the author, who is neither a psychiatric nor a legal expert but may be considered to have expertise in the field of journalism. The hypothesis that most of the claims about the Battered Woman Syndrome would be linked to expert psychiatric witnesses was not supported; most claims about the syndrome were in fact linked to the legal experts in the trial.

5.2 Claims About the Battered Woman Syndrome

Few articles included claims about the Battered Woman Syndrome and how this construct is defined in the literature. This finding is not surprising considering that the Battered Woman Syndrome construct is not necessarily news-worthy unless it is related to news-worthy events such as the court proceedings of a current case. Each of the three expert witnesses was nevertheless quoted in at least one article, describing some aspect of

the Battered Woman Syndrome construct. An article reporting on Dr. Glancy's testimony read:

> In psychiatry's diagnostic literature, there is no mention of 'battered spouse syndrome,' because the books deal with symptoms rather than causes, Dr. Glancy said. However, the symptoms of chronic depression and chronic post-traumatic stress disorder overlap with the symptoms of 'battered-spouse syndrome' as other experts have defined it, he said. (*OC,* Sept. 29, 1998).

Dr. Cole's claims about the Battered Woman Syndrome were published in another article: "Dr. Cole said that in general, women who suffer from battered spouse syndrome have devastated, demoralized personalities and are extremely submissive. They come to believe they are totally isolated and that their abusers are all-powerful" (*OC,* Sept. 30, 1998). Another article quoted Dr. Bradford's claim that "battered-wife syndrome is described as a situation where a person is the victim of at least two cycles of battering followed by phases of loving contrition. The women lose confidence, become socially isolated and are controlled by their batterers" (*OC,* Sept. 23, 1998).

Claims about the Battered Woman Syndrome were not only made by psychiatric experts but also by legal experts: "Assistant Crown attorney Julianne Parfett suggested yesterday that the syndrome is 'more a sociological phenomenon than a psychiatric diagnosis'" (*OC,* Sept. 29, 1998). Ms. Parfett's claim is consistent with that quoted from Dr. Glancy since both agreed that the Battered Woman Syndrome is not a psychiatric diagnosis found in the DSM-IV.

5.3 Claims About Lilian Getkate and the Battered Woman Syndrome

Although there were few claims made about the Battered Woman Syndrome generally, there were numerous claims made about the Battered Woman Syndrome in

relation to Lilian Getkate. One article focusing on Dr. Cole's testimony, read: "A former Ottawa woman who shot her husband dead while he slept meets the criteria of battered spouse syndrome, a psychiatrist testified yesterday" (*OC,* Sept. 30, 1998). The author wrote that "Dr. Cole, who described abuses Mrs. Getkate said she had suffered at her husband's hands for years, said the accused fit the criteria of battered spouse syndrome" (*OC,* Sept. 30, 1998).

An article reporting Dr. Bradford's testimony read: "Before killing her husband with his rifle, Lilian Getkate had many problems, but she did not suffer from battered-wife syndrome, according to a forensic psychiatrist who interviewed her after the shooting" (*OC,* Sept. 23, 1998). It went on to read: "Dr. John Bradford said Ms. Getkate, 38, could not have been suffering from battered-wife syndrome when she killed her husband because she was not isolated and helpless and had not been abused at least twice immediately before the shooting" (*OC,* Sept. 23, 1998). The author later quoted Dr. Bradford's claim that "there were elements missing from the battered-wife defence" (*OC,* Sept. 23, 1998). The article noted that Dr. Bradford "...added that if the events described in Dr. Cole's report occurred, Ms. Getkate probably suffered from battered-wife syndrome" (*OC,* Sept. 23, 1998).

As mentioned previously, several articles claimed that Lilian Getkate suffered from the Battered Woman Syndrome based on expert psychiatrists' assessments but failed to specify which psychiatrists had made the reported claims. For example, "two psychiatrists who interviewed the accused woman have testified that Ms. Getkate fit the criteria of battered spouse syndrome" (*OC,* Oct. 1, 1998) or "...two psychiatrists who examined Mrs. Getkate in 1996 testified that she fit the criteria for 'battered woman

syndrome'" (*OC,* Oct. 5, 1998a). Mr. McCann also claimed in his letter to the newspaper that "there was very persuasive psychiatric evidence" (*OC,* Nov. 16, 1998) that Lilian Getkate suffered from the Battered Woman Syndrome.

Many other articles referred to claims made by Mr. McCann about Lilian Getkate and the Battered Woman Syndrome. According to one article, "Mr. McCann in his address depicted Ms. Getkate as a woman suffering from 'battered wife syndrome' who killed a man caught up in weaponry and paramilitary training -- her emotional and sexual tormentor" (*OC,* Sept. 16, 1998). He also claimed that Mr. Getkate "...abused his wife physically, emotionally and sexually so much that she suffered from battered-wife syndrome before she killed him" (*OC,* Sept. 23, 1998). Statements to this effect appeared in several other articles. As the trial continued, these claims broadened to include statements that the defendant's actions were justified. For example, "...her lawyer, Patrick McCann, alleges that she was emotionally, physically and sexual abused to such an extent that she suffered from battered spouse syndrome and was justified in acting as she did" (*OC,* Oct. 1, 1998) and "the defence claims she should be acquitted because she was suffering from battered wife syndrome and shot him in self-defence" (*OC,* Oct. 2, 1998).

After the verdict was heard, competing claims about the degree to which Lilian Getkate suffered from the Battered Woman Syndrome appeared in the news media. For example,"...Ms. Parfett said, at most, Mrs. Getkate may have suffered 'moderate' abuse" (*OC,* Nov. 11, 1998). Justice Chadwick, on the other hand, claimed that "...Mrs. Getkate 'would fit well up on the (battered woman) scale'" (*OC,* Nov. 11, 1998).

5.4 Claims About the Law's Response

Claims were made in some of the articles about the extent to which evidence regarding the Battered Woman Syndrome influenced the jury's verdict. Not surprisingly, the Crown and the defence made different claims about the jury's acceptance of the Battered Woman Syndrome: "Assistant Crown attorney Julianne Parfett nonetheless said that the jury's refusal to acquit was a rejection of Mrs. Getkate's battered-wife-syndrome defence" (*OC,* Oct. 5, 1998a); "Defence lawyer Patrick McCann contended the verdict meant the jury accepted the battered wife syndrome defence 'to some degree'" (*OC,* Oct. 5, 1998a). Mr. McCann claimed in his letter to *The Ottawa Citizen,* that "the jury, therefore, must have found Lilian Getkate to be a victim of battered-spouse syndrome in order to find diminished intent and acquit her of murder" (*OC,* Nov. 16, 1998). The author of one article claimed that "To believe [Lilian Getkate] was to believe that she suffered from battered woman syndrome and under the law, killed her husband in self-defence" (*OC,* Oct. 5, 1998b).

The articles often referred to other cases that were similar to that of Lilian Getkate. One of these cases was that of *R. v. Lavallee* (1990), because this case had such a significant impact on the law's response to female-perpetrated intimate partner homicide:

> The landmark case in which a Canadian woman was first acquitted of murder after using the battered woman syndrome defence was the 1990 Supreme Court ruling regarding Winnipeg woman Angelique Lynn Lavallee. Ms. Lavallee shot her common-law husband in the back of the head after enduring years of abuse and being hospitalized at least eight times. An 11-man, one woman jury acquitted her of second-degree murder in 1987, and the Supreme Court upheld that verdict. (*OC,* Oct. 5, 1998a)

The articles also referred to more recent cases to show how the law has responded to other cases since that of Lavallee. One article claimed that "in the 1990s, at least three other Canadian women have been acquitted of either murder or manslaughter after invoking the battered woman syndrome defence" (*OC,* Oct. 5, 1998a). In addition to *R. v. Lavallee* (1990), two other cases were cited in the news media: *R. v. Bennett* (1993) and *R. v. Ferguson* (1997).

> At least three more women who also described themselves as battered women pleaded guilty to manslaughter and received sentences of no more than a year in jail. One of them was Jocelyn Bennett, an Ottawa woman who in January 1993 received a suspended sentence after pleading guilty to manslaughter. (*OC,* Oct. 5, 1998a)

> The charge and verdict in Mrs. Getkate's trial brings to mind the murder trial in Ottawa last year of Lisa Ferguson. Charged with second-degree murder, Ms. Ferguson was convicted of manslaughter in the death of her common-law husband, Vincent Foley. Ms. Ferguson alleged that she was suffering from battered woman syndrome. Justice Pierre Mercier granted Ms. Ferguson a sentence of two years less a day. (*OC,* Oct. 5, 1998a)

That both of these cases also occurred in Ottawa caused concern for many individuals, giving them the impression that battered women are not being held accountable for killing their intimate partners. Two articles reported Crown attorney Ms. Parfett's claims about the verdict: "I think it's an appalling message to send to the public" (*OC,* Nov. 11, 1998; *NP,* Nov. 11, 1998); "We simply say, 'Yes, you were abused. Fine. You walk.' That's what this sentence was all about'" (*OC,* Nov. 11, 1998; *NP,* Nov. 11, 1998); "The decision to spare her jail sends a message that women can kill, claim they have been abused, fail to prove it, and remain free..." (*NP,* Nov. 11, 1998). The author of one article indicated that

> In January 1996, legislation came into force that made prison sentences of at least four years mandatory for manslaughter offences in which firearms are used.

> Getkate is not covered by the legislation because she killed her husband in December 1995. (*NP*, Nov. 11, 1998)

Following this information was a quote from Ms. Parfett in which she stated, "she missed by three weeks, which I find ironic" (*NP*, Nov. 11, 1998).

Various other individuals offered interpretations of the court's verdict and sentence in Lilian Getkate's trial that competed with Ms. Parfett's claim. One article quoted the defendant's mother, June Fuller's, reaction to the verdict delivered in her daughter's case: "Manslaughter shows that society is beginning to understand what some of these women go through" (*OC*, Oct. 5, 1998a). The author of another article reported that,

> Justice Chadwick wrote that he expected any sentence he gave would be criticized. 'I do not think this case can be used as a precedent for women who kill their husbands to seek and obtain a lenient sentence,' he added. 'This is a unique case which must be looked at on its fact basis.' (*OC*, Nov. 11, 1998)

Mr. McCann added to this alternative interpretation of the verdict and sentence delivered in Lilian Getkate's case. He suggested that "rather than negate the evidence that she was a battered spouse, the manslaughter conviction confirms it" (*OC*, Nov. 16, 1998). He also claimed that

> There's a long tradition in Canada that women who have been abused by their husbands or partners and have reacted to that and killed them and have been convicted of manslaughter have not received custodial sentences. This is nothing new. (*NP*, Nov. 11, 1998)

Mr. McCann made numerous claims about how the Battered Woman Syndrome fits into law and the criminal justice system in his letter to the editor published in *The Ottawa Citizen*. He clarified that the syndrome is not in fact a legal defence and went on to explain how it was used to substantiate a claim of self-defence:

> First of all, let me explain that the law does not recognize a 'battered-spouse syndrome' defence. What it does recognize is that women who fit the criteria for that syndrome may legitimately act in self defence in situations where others would not be justified in doing so. Women who fit the criteria are also psychologically disturbed and the law has always recognized that people who kill as a result of psychological disturbance often have a diminished capacity to form the intent to kill. If that is so, they are guilty of manslaughter and not murder. (*OC,* Nov. 16, 1998)

Mr. McCann's letter concluded with some very strong claims in response to an editorial entitled 'An insult to our sense of justice' that was printed in *The Ottawa Citizen* several days before his letter was published:

> Your suggestion that the imposition of a conditional jail sentence of two years less a day is 'shocking' and a 'licence [sic] to kill' reflects your lack of knowledge in the manner in which similar cases have been dealt with by courts from British Columbia to Nova Scotia for the past 30 years. Out of 13 cases uncovered in our research, where a woman was convicted of manslaughter in striking back at an abusive partner, only two received jail sentences; one of two years, the other of seven months. All the rest received either suspended sentences or conditional sentences. The sentence imposed on Lilian Getkate is not a 'disturbing trend' as you suggest but reflective of a well-established attitude in our society to show some sympathy to women who are driven to strike back at their abusers. (*OC,* Nov. 16, 1998)

6. Analysis of Expert Testimonies and News Media

This section examines the findings from this in-depth analysis of claims-making about the Battered Woman Syndrome and related issues in expert testimony and in the news media in the case of Lilian Getkate. I discuss the importance of expertise in claims-making and the impact claims-makers' qualifications and credibility have on the way their claims are perceived. I then discuss claims about the Battered Woman Syndrome and how they are constructed in order to educate laypersons about intimate partner violence and homicide. I follow this with a discussion of how claims about the Battered Woman Syndrome are linked to the defendant, Lilian Getkate, and how they are used to

explain her perceptions and responses to abuse. Finally, I discuss claims-making about the law's response to intimate partner violence and homicide, generally.

The findings from this study suggest that there is a strong emphasis on expertise in claims-making about the Battered Woman Syndrome in court and in the media. Expertise is not limited to 'psy' professionals (Frigon, 1996) but extends to legal experts such as judges, defence lawyers, and Crown attorneys. Claims-makers' credibility can have a significant impact on how their claims are perceived and the impact of their claims. In court, expert witnesses' claims may have a significant and direct impact on the verdict delivered by a judge or jury so fact-finders focused a great deal of attention on establishing the psychiatrists' credentials at the outset of their testimonies. The defence described Dr. Glancy's qualifications in great detail for the court, particularly the work he had done in the areas of intimate partner violence and homicide and on the Battered Woman Syndrome and self-defence law. Less time was spent establishing Dr. Bradford's credentials, but he had less experience than the other experts in the field most relevant to the case, that of domestic violence.

It is important to examine the perceived credibility of claims-makers iwhen considering the making of judgments as to the validity of their claims. However, because claims-makers rely on claims made by others to support their own, it can be difficult to decipher who owns which claims. The expert psychiatric witnesses in this study made numerous claims about the Battered Woman Syndrome and made assessments about whether or not Lilian Getkate's experiences were consistent with this construct. However, many of their claims were based on Lilian Getkate's own claims about her experiences as a battered woman.

Expert witnesses may be given more opportunity to construct and communicate a set of claims during the examination-in-chief (i.e., the initial questioning period prior to cross-examination) because the questioning is more open-ended compared to cross-examination where the questions are more specific and closed-ended. Additionally, their claims are constructed in particular ways based on how they are questioned by the Crown attorney and defence lawyer. These litigants usually have a specific agenda and are trying to lead expert witnesses to construct a reality consistent with their positions. For example, Dr. Bradford told Lilian Getkate that the purpose of his interview was to make an independent opinion about her situation and that he would not necessarily make assessments that were consistent with the Crown's position. However, Dr. Glancy, in his testimony, claimed that because Dr. Bradford was retained by the Crown, he may not have been able to elicit detailed and sensitive information from Lilian Getkate.

The news media relied on claims made by legal experts more than those made by psychiatric experts. However, claims about the nature of the Battered Woman Syndrome were almost always quoted from the expert psychiatric witnesses who testified at Lilian Getkate's trial. As might be expected, legal experts' claims about the Battered Woman Syndrome were more likely to be quoted in reference to the legal aspects of the case such as self-defence law. The chain of claims-making was often very long in the news media as journalists quoted experts whose claims were in turn based on those of the defendant. In some cases, news articles did not specify which of the three psychiatrists had made which claims, making it difficult to identify the claims-makers. Journalists may also rely on claims-makers who authorities in a particular field consider to be lacking in expertise and credibility. Because journalists are not under oath and may base their claims on 'less

well-established' evidence and claims made by 'less credible' individuals, their claims may be perceived as less credible and have less impact than those made by expert witnesses in court.

Expertise and credentials are clearly important to claims-making. In court, much time and energy is spent establishing expert witnesses' qualifications. In addition, expert psychiatric witnesses rely on the claims of other experts, particularly researchers and academics. Dr. Glancy often referred to research in the legal and psychological literature to support his own claims. In the news media, experts are quoted more often than non-experts, perhaps because experts' claims are perceived as having more authority.

Claims about the Battered Woman Syndrome were more developed in the expert testimony sample than in the news media sample. This may be because in the former, the purpose of claims-making about the syndrome is to educate laypersons so they can make informed decisions (Terrance & Matheson, 2003), whereas in the latter, the purpose of claims-making on the subject is to report on the court proceedings in order to inform the public about current events. In court, several features of the Battered Woman Syndrome were discussed by expert witnesses testifying for the defence and the Crown; however, Dr. Glancy, expert witness for the defence, went into much more detail and more extensively linked the syndrome to other psychiatric disorders.

One of the fundamental features of the Battered Woman Syndrome is Walker's (1979) theory of the **cycle of violence**. The cycle of violence has three phases: the tension-building phase, an acute battering incident, and the loving-contrition phase. All three expert psychiatric witnesses spoke about the cycle of violence in their descriptions of the syndrome in court. Dr. Glancy used numerous examples and analogies in his

testimony so that his audience could better understand a situation with which they were unfamiliar. He gave examples of specific behaviours that characterize each phase of the cycle and compared leaving an abusive relationship to quitting smoking. The other psychiatric experts, Dr. Cole and Dr. Bradford, briefly named and described the three phases of the cycle but did not go into much depth.

Another feature of the Battered Woman Syndrome that is particularly important with regard to women who kill their abusers is the **escalation of violence**. In her early work on battered women who kill, Walker (2000) suggested that violence increased over time in abusive relationships. Experts testifying on behalf of both the defence and the Crown agreed that the intensity of violence in the Getkates' relationship was escalating. Dr. Glancy made numerous claims about the increased risk of injury or death to battered women following separation from their abusers, despite having restraining orders against them. Research suggests that battered women become increasingly aware of their partners' behaviour patterns and sensitive to subtle differences that may indicate an escalation in violence and an increased risk of injury or death (Department of Justice, 1998; Shaffer, 1997; Walker, 2000). However, because violent assaults are so unpredictable, battered women become very stressed (Walker, 1979, 1989) and research has suggested that they may become hypersensitive to their partners' behaviour and misinterpret the slightest change as a sign of severe danger (Kazan, 1997). Dr. Glancy made claims consistent with both the theory of heightened sensitivity and that of hypersensitivity. He claimed that battered women do become sensitive to subtle signs of increased risk. He also claimed, however, that women in chronic abusive relationships may become hypersensitive, suspicious, and distrustful. These inconsistent claims may

create more confusion than understanding among those unfamiliar with the Battered Woman Syndrome.

Learned helplessness, the second theory upon which the Battered Woman Syndrome is based, was not discussed by all of the expert witnesses. This theory describes how women come to lose their sense of control and feel trapped in abusive relationships. Dr. Glancy touched on this theory but indicated that Seligman, the scientist who first identified the behavioural response, found it to be too simplistic and has since developed a more complex theory. Dr. Bradford identified the theory of learned helplessness as an important aspect of the Battered Woman Syndrome and claimed that it was related to psychological control. He also claimed that some battered women become helpless, trapped, and unable to escape violent relationships. Dr. Bradford claimed that the most important aspect of the Battered Woman Syndrome is the effect it has on battered women and Dr. Glancy emphasized that the most important features of the syndrome are the resulting perceptions and responses of battered women.

The Battered Woman Syndrome is not a diagnosable **mental disorder** but rather a set of psychological symptoms suffered by some women victims of intimate partner violence. Dr. Glancy claimed that the reason the syndrome does not appear in the DSM-IV is because the syndrome implicates that the symptoms are caused by intimate partner violence and psychiatric diagnoses do not identify causes. There is a danger, however, that the syndrome may be perceived as too poorly understood to meet the standards for inclusion in the DSM-IV.

Although the Battered Woman Syndrome is not listed in the DSM-IV, many of its features do appear under the rubric of Post-traumatic Stress Disorder (PTSD). In addition,

many symptoms associated with the Battered Woman Syndrome fit a diagnosis of depression. In his testimony for the defence, Dr. Glancy linked the syndrome to PTSD and depression, claiming that chronic abuse can be considered a sufficiently traumatic experience for PTSD and that depression is a common response to intimate partner violence and a feature of the Battered Woman Syndrome. Dr. Cole linked it to PTSD, claiming that complex PTSD is synonymous with Battered Woman Syndrome and that the trauma suffered in chronic PTSD may be intimate partner violence. Dr. Bradford claimed that battered women may suffer from complex PTSD and that depression is not uncommon among individuals in unhappy relationships.

The complexity of the relationships among the Battered Woman Syndrome, complex PTSD, chronic PTSD, and depression may serve to confuse jurors about whether or not women regarded to be suffering from the syndrome are considered to be psychologically disturbed or mentally well. Their interpretation of how the Battered Woman Syndrome relates to mental disorder may have an enormous impact on subsequent judgments about the reasonableness of a defendant's perceptions and responses. According to Walker (1989), expert testimony on the Battered Woman Syndrome is intended to explain to the court that the defendant's perceptions and subsequent responses were reasonable. Thus, it is important that experts are clear about the relationship between the syndrome and mental disorder and that their audiences do not perceive mixed messages.

Another important function of expert testimony on the Battered Woman Syndrome is to dispel myths about battered women and the reasons they stay in abusive relationships (Lederman, 2002; Kazan, 1997; Walker, 1989). The public has been found

to hold many misconceptions about battered women (Ewing & Aubrey, 1987) and expert witnesses are called upon to educate the judge or jury about battered women's experiences. One of the most widespread myths about intimate partner violence is that women can easily leave their partners. Only the expert witnesses testifying for the defence in this case made claims about the barriers that prevent battered women from leaving abusive relationships. Dr. Glancy went into great detail about the numerous reasons battered women will not or cannot leave their abusers. Dr. Cole also mentioned several reasons why women cannot leave abusive relationships and suggested that most battered women do not have the necessary resources to successfully leave their abusers. The Crown's expert witness, Dr. Bradford, contributed to misconceptions about battered women rather than dispelling them by claiming that some physical aggression is not uncommon in unhappy relationships. This statement minimizes intimate partner violence and suggests that it is only considered abuse if it falls under certain categories of violence or if it reaches a certain level of severity.

Claims about the Battered Woman Syndrome in the news media focused on the cycle of violence, psychological characteristics displayed by women who suffer from the syndrome, and how the construct fits into psychiatry. General information about the syndrome was always presented in quotes from psychiatric and legal experts such that the journalists themselves made no claims of their own about the nature of the Battered Woman Syndrome. The claims quoted in the news media indicated that the Battered Woman Syndrome is not a mental disorder but does have many symptoms in common with PTSD and depression. The news media sometimes highlighted these symptoms but did little to dispel misconceptions about battered women.

Journalists were very inconsistent in naming the syndrome and frequently referred to it as both the Battered Wife Syndrome and the Battered Spouse Syndrome. This inconsistency was not limited to journalists, as both the Crown attorney and defence lawyer in Lilian Getkate's trial used these variations a few times each. One expert witness referred to the Battered Spouse Syndrome once in response to a question using the same term but overall, the expert psychiatrists were least likely to call the syndrome anything but the Battered Woman Syndrome. Inconsistencies in naming the construct may have an impact on how it is perceived and whether it is thought to be reliable, valid, and well-accepted in the psychiatric community.

Claims about the defendant, Lilian Getkate, and the extent to which she fit the criteria for the Battered Woman Syndrome were very contentious and thus, individuals representing opposing parties in the adversarial trial process made several competing claims. Expert witnesses in this case conducted very thorough assessments of Lilian Getkate and went into great detail to construct a psychological profile of the defendant. Many of the claims made about Lilian Getkate typified her experiences in comparison to those of other battered women. These claims focused on her perceptions, subsequent responses, and accuracy and consistency in relating her story to the three expert psychiatric witnesses. It is very difficult to assess the validity of claims made in court because so many of them are based on hearsay. Cases of intimate partner homicide are especially challenging because the defendant is one of the key claims-makers in court, either directly through her own testimony or indirectly through expert witnesses' testimonies. Often the only person who can support or refute her claims about the relationship and the final incident is her deceased partner.

The expert psychiatric witnesses made claims about the aspects of the Battered Woman Syndrome that were supported by hearsay evidence of the Getkates' relationship and the results of Lilian Getkate's psychological assessment. Dr. Glancy claimed that there was significant abuse in various forms and that personality testing revealed a profile consistent with the Battered Woman Syndrome. Dr. Cole also claimed that the abuse inflicted upon Lilian Getkate was severe and varied. Dr. Bradford admitted that Lilian Getkate was abused but minimized the violence she suffered by claiming that she had not been punched and did not seek medical attention for injuries.

Women said to be suffering from the Battered Woman Syndrome often report feeling **trapped** in abusive relationships (Shaffer, 1997; Walker, 1989). The Crown's expert witness indicated that this is a common perception among battered women; however, only the expert witnesses testifying for the defence suggested that Lilian Getkate herself felt 'trapped,' 'helpless,' and 'hopeless' in her relationship. Perceptions about being trapped may be related to the degree of social control and isolation exerted in abusive relationships. Defence experts claimed that Maury Getkate exerted significant social control over his wife. The Crown made counter-claims about the existence of social isolation in the Getkates' relationship and suggested that this was one of the elements missing in the application of the Battered Woman Syndrome to Lilian Getkate.

Both expert witnesses testifying on behalf of the defence highlighted several reasons the defendant did not perceive escape as an option. Dr. Bradford, in his testimony for the Crown, admitted that Lilian Getkate's husband had threatened her about leaving him but did not claim that the defendant was unable to leave. In fact, he implied that since she had contacted a lawyer about separation she must have been aware of

alternative courses of action. These sorts of implications tend towards blaming the victim rather than absolving her of responsibility for her victimization and for having stayed in an abusive relationship.

As stated above, what is important about the Battered Woman Syndrome is victims' responses to abuse based on their perceptions. Thus, it is important to assess the accuracy or reasonableness of battered women's perceptions in order to judge whether or not a lethal response based on these perceptions was justified. Dr. Glancy claimed that Lilian Getkate's perceptions were shaped by the abuse she suffered and were accurate despite the lack of an imminent threat. He also told the jury that, in his opinion, her response to the severe abuse suffered was reasonable. Dr. Cole claimed that Lilian Getkate's perceptions about the difficulty of leaving her abusive husband were indeed reasonable. Dr. Bradford, on the other hand, suggested that Lilian Getkate's lethal response to violence was not justified because she did not fear serious injury and she had explored her options regarding separation from her husband.

As with claims about the Battered Woman Syndrome in general, claims about whether or not Lilian Getkate suffered from the Battered Woman Syndrome were much more developed in court than in the news media. According to the articles in the news media sample, Dr. Cole claimed that Lilian Getkate did suffer from the Battered Woman Syndrome but Dr. Bradford claimed that she did not meet the criteria for the syndrome. Because the news media offer such a limited picture of court proceedings, it might be difficult for the public to make judgments about whether or not Lilian Getkate suffered from the Battered Woman Syndrome and if so, to what extent. Since public opinion about the law's response to intimate partner violence and homicide is shaped in part by the

media (Buckingham, 2004), the accuracy of journalists' representations of court proceedings and their outcomes is important.

Claims about the most appropriate verdict in the case under analysis were not particularly prevalent in the expert testimonies; however, some very strong claims were made by expert witnesses testifying for the defence about the law's response to intimate partner violence. None of the expert witnesses made claims about the outcome of the trial; instead, they deferred the ultimate decision-making responsibility to the court (i.e., the judge and jury). This suggests that although the psychiatrists claimed to be experts in the field of intimate partner violence, they did not falsely attempt to stretch their expertise into the field of law.

Dr. Glancy referred to recent initiatives to address intimate partner violence as 'successful' and claimed that the criminal justice system now provides 'better' services to battered women. His choice of words implies that the law is moving in a positive direction by responding more sympathetically to the plight of battered women. This language may have been used to encourage the jury to make an equally sympathetic decision in the case of *R. v. Getkate* (1998). Dr. Glancy also challenged the jury to consider a more sympathetic response to Lilian Getkate's case by referring to the outcomes of similar cases such as *R. v. Lavallee* (1990) and other, more recent, cases.

In the news media, reactions to the verdict and sentence delivered in Lilian Getkate's trial were strong and claims about the law's response to intimate partner homicide in general were common. Claims about the verdict and sentence were clearly split between those supporting the defence and those supporting the Crown. Claims that were quoted from the Crown attorney and the family of the deceased were critical of the

trial's outcome whereas those quoted from the defence lawyer and Lilian Getkate's family supported the outcome, particularly the sentence. When making claims about the law's response to intimate partner homicide in general, journalists referred to other cases, such as the landmark case of *R. v. Lavallee* (1990) and the more recent Ottawa cases of *R. v. Bennett* (1993) and *R. v. Ferguson* (1997), in which the defendants used the Battered Woman Syndrome to substantiate claims of self-defence.

CHAPTER V

CONCLUSION

Claims-makers, including expert witnesses and journalists, construct particular realities by focusing on certain aspects of a putative condition and excluding others (Best, 1995a). This strategy was apparent in claims-making about the Battered Woman Syndrome and related issues in both expert testimony and the news media. The introduction of expert evidence on the Battered Woman Syndrome in the trials of battered women who killed and claimed self-defence has been described as a double-edged sword (Shaffer, 1997). It has facilitated an individualized approach to law and saved many women the pain of imprisonment and, in some cases, the burden of a criminal record. However, there are several unintended negative consequences of its use in court to substantiate claims of self-defence.

Expert evidence on the Battered Woman Syndrome is intended to support claims of self-defence by explaining how a battered woman's perceptions and subsequent actions against her abuser meet the law's requirements. Because of their unique circumstances, battered women who kill often face challenges with regard to four aspects of self-defence law: reasonableness, imminence, proportionality, and retreat. In this trial, expert witnesses discussed the issues of reasonableness and imminence and indirectly touched on proportionality and retreat. Although expert witnesses for the defence and Crown agreed that the threat was not imminent, an expert witness testifying for the defence claimed that the defendant's perceptions and responses were reasonable. With regard to proportionality, one expert witness testifying for the defence and the Crown's

expert witness commented on the significant size difference between the defendant and the deceased. Both experts testifying for the defence discussed the reasons battered women feel they cannot leave their abusers, an issue related to retreat.

The problems with using the Battered Woman Syndrome in court to explain intimate partner homicide include the following: helplessness is not consistent with fighting back; the Battered Woman Syndrome label may stereotype battered women; the notion of the Battered Woman Syndrome medicalizes battered women's experiences of abuse; focusing on the woman's helplessness detracts attention from her partner's violence; the notion of the Battered Woman Syndrome individualizes a social problem. Several of these problems were observed in this case study. Experts described the defendant as helpless but failed to explain how this helplessness was converted into action resulting in homicide. It appears that this link is not clearly understood, even in the literature (e.g., Kazan, 1997), and is not clearly explained to fact-finders in court. There is a danger that taking an individualized approach to law may create a new battered woman stereotype (Chan, 1997; Schneider, 1980; Shaffer, 1997). In this case, expert witnesses and journalists alike emphasized the defendant's pro-social characteristics in order to strengthen her status as a victim. This emphasis on her pro-social characteristics implies that were she criminal, or even just less pro-social, she would be less entitled to claim victim status and would be held more accountable. The news media also emphasized Lilian Getkate's innocence and pro-social qualities in their reporting.

The expert witnesses focused the majority of their claims-making on their psychological assessment of the defendant at the expense of the violence perpetrated by the deceased. Claims about the violent and criminal behaviour of the deceased were,

however, relatively common in the news media. Although both were clearly focused on the case of Lilian Getkate, there were significant claims made in both expert testimony and news media about intimate partner violence and homicide, generally, as well as the law's response to these social problems.

The case of *R. v. Getkate* (1998) has been used as jurisprudence in a few more recent cases. Her case was used to support requests for non-custodial sentences in two cases of female-perpetrated intimate partner homicide: Maura Cabrera (*R. v. Cabrera,* 2003), a battered woman who pleaded guilty to manslaughter after killing her spouse, was granted a conditional sentence of two years less a day; S. M. (*R. v. S. M.,* 2004), an Aboriginal woman who pleaded guilty to manslaughter after killing her violent common-law spouse, was sentenced to two and a half years in prison. The case of *R. v. Getkate* (1998) was also used to support a recommendation for a non-custodial sentence in two other cases: Bonnie Susan Simcoe (*R. v. Simcoe,* 2002) who was incarcerated for four years after pleading guilty to manslaughter for killing her sexually abusive father; Donna Whitteker (*R. v. Whitteker,* 2004), who pleaded guilty to manslaughter after unintentionally killing her husband, was sentenced to two years less a day, to be served in the community. That all of these women pleaded guilty provides further evidence to suggest that women, particularly battered women, who kill face enormous challenges in the legal system.

1. Recommendations for Future Research

This research focused on claims-making about the Battered Woman Syndrome and issues related to this construct in the case of *R. v. Getkate* (1998). Because this study

is a case study, it is difficult to make generalizations about female-perpetrated intimate partner homicide and claims-making on the Battered Woman Syndrome, generally. This study was also limited by the fact that I did not have access to the entire trial transcript. In light of the findings of this study, I make several recommendations for future research below.

There are countless intriguing issues in the case of *R. v. Getkate* (1998) which merit analysis. Because so many of the claims made by expert witnesses in her trial were based on Lilian Getkate's own claims, jurors' assessment of the validity of these claims depended on their assessment of Lilian Getkate's credibility. The issue of the defendant's credibility was salient in the testimonies, particularly when the expert witnesses were questioned about the consistency of the accounts Lilian Getkate provided to each of them. She was interviewed by Dr. Bradford six days after the offence, by Dr. Cole some time after that, and by Dr. Glancy approximately six months after the offence. Considering that the three psychiatrists had different intentions and goals for their interviews, there was some variability in the information each one gathered. One particularly problematic issue was the fact that Lilian Getkate denied any sexual abuse in her relationship with Maury Getkate when interviewed by Dr. Bradford but reported significant sexual violence to Dr. Glancy and Dr. Cole.

An even more in-depth analysis of this case would examine the entire trial transcript. I only had access to the three expert testimonies but there were numerous other witnesses who testified including Lilian Getkate herself. It would be interesting to examine other witnesses' claims about the Battered Woman Syndrome and related issues as well as the judge's instructions to the jury. Researchers might also conduct a

comparative analysis of this case and that of *R. v. Ferguson* (1997). Both of these women's trials occurred in Ottawa, within one year of each other; both women claimed self-defence and had experts testify on the Battered Woman Syndrome at their trials; and both women received non-custodial sentences after being convicted of manslaughter by a jury.

Not only were these two cases similar with regards to the plea and conviction, but they also involved some of the same claims-makers. Ms. Julianne Parfett was the Crown attorney in the case of *R. v. Ferguson* (1997) and Dr. John Bradford was the expert psychiatric witness who testified on behalf of the Crown. In addition, the expert psychiatric witness testifying on behalf of the defence was Dr. Fred Shane who testified in the case of *R. v. Lavallee* (1990). Including other similar Canadian cases in this proposed study might allow for an analysis of claims-making on the Battered Woman Syndrome in court over time since it was first used successfully in *R. v. Lavallee* (1990).

Trial transcripts are a valuable source of claims-making activity in court. However, it is impossible to assess from an analysis of trial transcripts the impact of expert witnesses' claims on judge and jury decision-making. Judges may discuss expert testimony in their judgments but it is difficult to measure the weight given to such testimony in verdicts and sentencing decisions. There are simply too many factors that influence court decisions to be able to assess the impact of all the claims made in a trial. Supplementing transcript analysis with interviews might reveal more about the process of claims-making and the intentions of claims-makers. Interviews with defence lawyers and Crown attorneys may provide information on how they led expert witnesses in certain ways to construct claims about the Battered Woman Syndrome. Interviews with expert

witnesses themselves may provide insight into their intentions as claims-makers and how they decided which information to include in their claims. Interviews with judges may reveal their intentions in instructing the jury and how the claims-making of expert witnesses impacted their decision-making.

Social constructionists are interested not only in what claims are made and by whom, but also in how claims are perceived by audiences and the effect these claims have on their attitudes and behaviours (Best, 1989a). Interviews with jury members may provide a great deal of insight into their perceptions of claims-makers and claims made in court about the Battered Woman Syndrome. Interviews with jurors may also reveal how their perceptions of the claims-makers and their claims impacted their decision-making.

A more in-depth analysis of claims-making about the Battered Woman Syndrome in the news media might compare claims-making across a variety of cases, across jurisdictions, or over time. Researchers might also examine claims-making about the Battered Woman Syndrome generally as opposed to in relation to a specific case to see how the construct has been defined and re-defined over time. This case study has examined claims-makers and their claims about the Battered Woman Syndrome in expert testimony and in the news media. Future research might explore how their claims are received and the impact they have on decision-making in Canadian case law.

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APPENDIX A

'REQUEST FOR TRANSCRIPT' FORM

MINISTRY OF THE ATTORNEY GENERAL
COURT REPORTER'S OFFICE
Request for Transcript

_____
Style of Cause (Or Name of Accused)

_____
Date of Trial or Hearing

_____
Courtroom Number and / or Justice's Name

_____
Date Transcript Ordered

_____
Date Transcript Required (SPECIFY DATE)

I require _____ copy/copies of the transcript of the evidence taken in the above matter, and upon being advised of the completion of the transcript, I undertake to pay the standard fee prescribed with certified cheque/money order/exact cash.

In the event I desire to cancel this order, I will do so by written communication to the reporter involved and undertake to pay the standard fee for the work done up to the date of receipt of the written communication to the reporter.

PLEASE NOTE: A DEPOSIT MAY BE REQUIRED BY THE REPORTER INVOLVED ON THE CASE.

FEES:

$3.20 PER PAGE
(FIRST ORDERING PARTY)
$0.55 PER PAGE
(ADDITIONAL COPY/IES)
$3.75 PER PAGE
(COURT OF APPEAL TRANSCRIPTS ONLY)

NAME OF REPORTER:

_____

DATE GIVEN TO REPORTER:

_____

ORDERING PARTY:

_____
NAME (PLEASE PRINT)

_____
ADDRESS

_____
TELEPHONE NUMBER

_____
SIGNATURE

APPENDIX B

LIST OF ARTICLES IN NEWS MEDIA SAMPLE

News media articles (listed by date):

1. Hum, P. (1998, September 16). 'The secret life' of the Getkates: Violence, abuse led woman to kill husband, court told. *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

2. Hum, P. (1998, September 17). Slain man described as calm, gentle: 'I've seen more ill-tempered teddy bears,' friend says. *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

3. Rogers, D. (1998, September 23). Doubt cast on Getkate's defence: Psychiatrist doesn't believe claim of battered-wife syndrome. *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

4. Hum, P. (1998a, September 25). Getkate hit daughter 'as hard as he could,' court hears. *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

5. Hum, P. (1998b, September 25). Accused describes years of abuse. *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

6. Hum, P. (1998, September 26). Getkate had trouble 'sticking to a story,' lawyer argues. *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

7. Hum, P. (1998, September 29). Woman's mind shut off during killing, court told: Mental 'cut-off valve' had been turned on, psychiatrist testifies. *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

8. Hum, P. (1998, September 30). Getkate fits bill for abused wife, psychiatrist says: Defence witness calls accused consistent, reliable. *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

9. Hum, P. (1998, October 1). 'Desperate for a way out of her marriage': Closing arguments concur on one fact: Lilian Getkate felt trapped. *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

10. (1998, October 2). *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

11. Jury continues deliberations. (1998, October 4). *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

12. Hum, P. (1998a, October 5). Getkate convicted of lesser charge: Manslaughter verdict shows that society is beginning to understand. *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

13. Hum, P. (1998b, October 5). 'This abuse thing is a crock': The family of Maury Getkate feel he was wrongly painted as a wife abuser. There is no evidence in his past to indicate such behaviour, they tell Peter Hum. *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

14. Hum, P. (1998, November 11). Getkate won't go to jail: Lenient sentence for killing spouse angers Crown, victim's family; 'I think it's an appalling message to send to the public.' *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

15. Hum, P. (1998, November 11). Husband-killer is spared prison: 'Appaling message': No independent evidence of abuse, Crown points out. *National Post.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb

16. McCann, P. F. D. (1998, November 16). [Letter to the editor]. *The Ottawa Citizen.* Retrieved February 27, 2005, from http://proquest.umi.com/pqdweb