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— Franks & Zalev - This Week in Family Law

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Contents

Big Appellate Ideas, Hard Trial Realities

***Ahluwalia v. Ahluwalia*, 2026 CarswellOnt 7706 (S.C.C.)**

Big appellate ideas have a way of looking different in the trenches of family court. *Ahluwalia* is no exception.

The decision is doctrinally ambitious. It creates a new cause of action — the tort of intimate partner violence — intended to better address harms the Supreme Court concluded existing torts do not adequately address.

We write this not as tort academics, but as family law practitioners. Others will undoubtedly bring deeper tort theory, appellate, and policy lenses to this decision. Our focus is narrower: how this new tort is likely to function in real family cases involving real clients, real cost constraints, and an already strained justice system. The court articulates the elements of the tort while leaving difficult practical questions for lower courts to resolve — a serious concern in a family justice system already struggling with delay, burdened by costs, and grappling with resource constraints.

The court was clearly trying to solve a serious and longstanding problem, and the court has recognized coercive control as a distinct civil wrong. If supported by disciplined pleading, active case management, and adequate resources, the new tort will meaningfully improve how the justice system responds to the pervasive problem of intimate partner violence. But it could just as easily make cases longer and more challenging to settle, more expensive to litigate, and more vulnerable to strategic use or misuse in some already high-conflict proceedings.

We hope it will be the former. We worry it may be the latter.

The Decision — So What is *Ahluwalia* About?

The underlying facts in *Ahluwalia* are straightforward. And disturbing. The parties married in India in 1999, moved to Canada, and separated in 2016 after a 16-year marriage marked by serious abuse. The trial judge found that Mr. Ahluwalia physically assaulted, intimidated, humiliated, isolated, sexually pressured, and financially controlled Ms. Ahluwalia. She was self-represented for much of the trial.

Although Ms. Ahluwalia did not expressly ask the court to recognize a new tort of family violence, the trial judge did so and awarded $150,000 in damages — $50,000 each in compensatory, aggravated, and punitive damages. In the alternative, she held that the same damages were recoverable under the existing torts of assault and intentional infliction of emotional distress.

The Court of Appeal partly allowed the appeal, setting aside the punitive damages award, upholding the compensatory and aggravated damages awards, but declining to recognize a new tort, concluding that existing torts were sufficiently flexible to address the misconduct.

By the time the case reached 301 Wellington Street in Ottawa (that is the address of the Supreme Court of Canada), the dispute looked very different. This was not an ideal factual vehicle for resolving practical questions that will define the tort's day-to-day application. Mr. Ahluwalia conceded liability under the existing torts before the Court of Appeal. By the time the matter reached the Supreme Court, the parties had agreed to not contest the $100,000 in damages fixed by the Court of Appeal. As a result, the central live issue was whether a new tort needed to be recognized at all.

The positions before the Supreme Court reflected a stark divide. An extraordinary number of interveners participated (20 were named, although some were grouped and represented by the same counsel), including the Attorney General of Canada and the Attorney General of British Columbia. Many advanced positions aligned with Ms. Ahluwalia's argument that existing legal remedies did not adequately capture the cumulative harms and lived reality of intimate partner violence, though at least one — the Tort Law and Social Equality Project — urged a more incremental and carefully tailored doctrinal response.

Mr. Ahluwalia took the opposite view. He did not dispute the seriousness of intimate partner violence, nor his own liability under existing torts. His position was that the common law already offered the tools needed to respond, and that creating a new tort in a case where compensation was no longer in issue was neither necessary, nor principled, nor incremental.

Justice Kasirer, writing for a majority of five, recognized a narrower version of the proposed new tort: the tort of intimate partner violence. Justice Karakatsanis agreed that a new tort should be recognized, but would have gone further, rejecting a framework limited to coercive control in favour of one that would also capture acts or threats of violence causing physical or psychological harm within an intimate relationship.

Justices Côté, Rowe, and Jamal dissented. In their view, existing torts already provide a complete remedy on the facts of this case, making this the wrong vehicle for creating a new cause of action.

What Did the Majority Do?

The majority concluded that existing torts do not fully address or capture the wrong represented by coercive control within intimate relationships. In their view, torts such as assault, battery, false imprisonment, intrusion upon seclusion, and intentional infliction of emotional distress can address important aspects of abusive conduct, but do not adequately recognize coercive control between intimate partners as a distinct wrong.

The majority's concern was not simply that coercive control may involve serious physical or psychological harm. It was that the associated wrong is often broader than discrete incidents of violence or emotional injury. Coercive control operates *cumulatively*, through patterns of conduct that can deprive one partner of dignity, autonomy, and equality — a triad repeated many, many times by the majority — within the relationship.

On that reasoning, coercive control is something different and not merely an aggravated version of an existing tort to be compensated by higher damage awards or aggravated damages. That is what led the majority to conclude that a distinct legal response was required.

However, the majority imposed **important** limits on the scope of the new tort. It rejected the trial judge's broader "family violence" tort, and declined to adopt the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), definition *holus-bolus*. Instead, it recognized a *narrower* intentional tort *confined* to intimate partners and *centred* specifically on the deprivation of dignity, autonomy, and equality resulting from coercive control. So that narrows things. The court was not creating a general tort for abusive family relationships.

That confinement to intimate partners was deliberate and is important. At paragraphs 97 and 103, Justice Kasirer distinguished this tort from violence directed at children, elders, or other family members, noting that those relationships involve different dynamics and may warrant different legal responses — though the majority expressly left the door open for future development in those areas (para. 18).

And at paragraph 102, the court offered a definition of "intimate partnership" that further circumscribes the tort's reach: a relationship of "close personal connection, sustained over a period of time, and marked by mutual interdependence, care or commitment, and the presence of domestic, emotional, financial or physical intimacy." It is rooted in conjugality but not defined by existing legal forms like marriage or cohabitation. That definition matters because it excludes fleeting connections, friendships, and other familial bonds — however meaningful — from the scope of this new cause of action.

Liability for the new tort turns on three things. **First**, the conduct must arise in an intimate partnership or its aftermath. **Second**, the defendant must have intentionally engaged in the conduct. **Finally**, viewed objectively in the context of the relationship, the conduct amounted to coercive control.

And what is the definition of "coercive control"? The court did not entirely finish building that house — although it laid much of the foundation in paragraphs 187-193.

The majority makes clear that coercive control is not a specific act, but a relational pattern. It can include conduct already captured by existing torts such as assault, battery, intentional infliction of emotional distress, intrusion upon seclusion, etc., but also more subtle conduct that may not independently be tortious at all: surveillance, financial control, isolation, intimidation, manipulation, threats, litigation abuse, and other behaviours that, viewed cumulatively, can entrap or subordinate an intimate partner.

Context is everything. Conduct that appears innocuous in isolation may take on a very different character when viewed against the broader power dynamics of the relationship. Courts are directed to assess the totality of the conduct, not merely whether particular incidents independently satisfy existing tort doctrines.

The court also tries to draw limiting lines in paragraphs 121, 193, and 196. Not every ugly relationship is tortious. Dishonesty, infidelity, emotional neglect, immaturity, antagonism, or the ordinary dysfunction of a high-conflict separation do not, without more, amount to coercive control. Not even all violence between intimate partners will qualify; the conduct must interfere with the claimant's dignity, autonomy, and equality. Nor should a victim's resistance be mischaracterized as coercive control.

Those cautions are sensible. But cautions are not the same as operational guidance.

Why This Is Harder Than It Looks

The majority stated, at paragraph 14, that "[t]he threshold for determining whether the alleged conduct objectively constitutes coercive control will generally be readily met, since a reasonable person would regard this kind of abusive conduct as a breach of the trust between two equal partners that is incompatible with an intimate partnership." That may well be true in clear cases involving egregious, sustained abuse.

The hard cases will not be the obvious ones involving egregious coercive control. They will be the ambiguous ones: messy relationships, reactive conduct, and fact patterns where both parties offer plausible competing accounts. They will be the cases where everything is disputed, nothing is admitted, credibility is central, and nuanced findings about years of relationship conduct are unavoidable.

None of this is to deny the legitimacy of the problem the court was trying to solve. Any justice system should be capable of doing justice for people subjected to sustained coercive abuse within intimate relationships. These are serious wrongs that cause profound harm. The law should be equipped to recognize and remedy them. The majority was responding not just to a doctrinal gap, but to the lived experience of people whose suffering does not neatly fit within traditional causes of action.

This is not an argument against recognizing that wrong. It is an argument for confronting the implementation questions early, while there is still an opportunity to solve them thoughtfully. The answers will come through lower-court decisions, scholarship, procedural innovation, and practical experience. The question is whether we begin that work now or after avoidable cost, delay, and confusion.

Recognizing a new cause of action is easier than building a system capable of enforcing it fairly, efficiently, and proportionately. In a well-functioning justice system, a judge could promptly hear oral evidence, make nuanced findings about patterns of coercive or abusive conduct, and assess damages within a workable legal framework in a timely and affordable way. But that is not the family justice system we actually have.

We have delay. We have crushing cost barriers. We have overburdened motions courts. We have litigants who already struggle to obtain timely determinations about basic parenting, support, and property disputes. And all of this persists despite enormous judicial effort.

Family law is already one of the most demanding multidisciplinary areas of legal practice. Lawyers and judges routinely move between parenting disputes, income determination, family violence, business valuation, tax, and increasingly complex procedural issues. *Ahluwalia* adds another layer: a novel intentional tort with no established damages framework and uncertain interaction with existing statutory remedies.

Many coercive-control claims will be fact-heavy credibility cases built on years of relational history. They will require significant judicial time from a system already stretched beyond capacity.

Practitioners will immediately recognize the front-end burden. Before counsel can responsibly advise a client on the viability of a coercive-control claim — or the exposure a defendant faces — counsel may need to review years of text messages, emails, financial records, and other contextual communications to assess whether the alleged cumulative pattern is there and whether it can be proved. That is expensive, time-consuming work, and it will often need to begin long before anyone even files a claim. For some litigants, the cost of determining whether a viable claim exists may itself be prohibitive.

And that is only the beginning. Once a tort claim is formally in play, disclosure battles may increase in length and breadth dramatically. Medical records, counselling records, employment files, police occurrence reports, third-party institutional records, financial disclosure, electronic communications, and privilege disputes may all become battlegrounds. Family cases are already disclosure-intensive. Adding a fact-heavy intentional tort risks making them materially more so.

It is worth remembering what *Ahluwalia* actually looked like when it reached the Supreme Court. Liability under existing torts had already been conceded. Damages had been settled. The court was deciding a pure legal question with the institutional resources of the country's highest court. Fully contested coercive-control claims in trial courts will look very different.

That matters because this decision creates a new legal tool. But it is still only a tool. If the surrounding machinery — disciplined pleadings, effective case management, summary procedures that actually work, jurisdictional coherence, and trial capacity — is missing or broken, the new tool will not fix much.

That leaves judges and counsel to develop practical frameworks in real time.

That is not ideal in a system already under strain.

The Practical Problems the Court Left Open

Now we have a new cause of action that asks courts to assess not discrete incidents, but the cumulative pattern of relationship conduct possibly spanning years or decades. That raises a host of practical and legal questions the court did not fully answer.

Limitation periods

How limitation statutes will apply to this new tort is unclear. For example, ss. 16(1)(h), (h.1) and (h.2) of Ontario's *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, remove the basic limitation period for certain sexual and assault-based claims in specified relationships. But whether a coercive-control claim falls within these statutory limitation period exceptions is far from obvious, and the statutory wording does not obviously capture this new tort. That means the ordinary limitation period — and ordinary discoverability principles — may apply, unless courts determine that, under s. 5, the limitation period should be delayed because, having regard to the nature of the injury, a proceeding would not earlier have been an appropriate means to seek a remedy.

As the dissent noted, the new tort is unprecedented, and further litigation will be needed to determine how limitation regimes across the country apply. Legislative amendment may ultimately be needed. Near-term litigation may well focus on historic conduct, discoverability assumptions, and the scope of statutory exemptions. [For further discussion about these issues, see the May 18, 2026 (2026-19) edition of *TWFL*.]

To its credit, the majority did attempt to address this. At paragraph 158, Justice Kasirer suggested that coercive intimate partner violence "should be understood as a continuing injury," which could delay the running of a limitation period. But the court also acknowledged that "the recognition of a new tort may not, on its own, resolve the issues arising from the operation of limitation statutes" and that "[e]xtending existing exemptions from limitation periods to the new tort may require legislative action, as was done for civil claims of assault or battery arising from intimate partnerships."

That is a significant concession: the court created the tort but recognized it cannot, by itself, ensure that claimants will have the time to bring it. If the courts cannot solve core implementation problems on their own, that raises an obvious question about institutional responsibility.

The Attorney General of Canada intervened in support of recognizing a new tort. To be fair, common law development often occurs incrementally through litigation rather than legislation. However, if the federal government's position was that existing legal remedies inadequately addressed coercive controlling violence, this also highlights the broader question of institutional responsibility for building workable solutions.

Legislatures can define scope, procedural safeguards, jurisdiction, and limitation treatment in ways courts deciding a single case simply cannot. A court can recognize a common law right. It cannot build procedural architecture.

There is, of course, also a constitutional wrinkle. Parliament likely cannot create a statutory civil remedy under the *Divorce Act*; that likely falls within provincial jurisdiction. It is at least a law school division of powers question. But even if direct legislation were constitutionally unavailable, leadership was not. Funding research into damages frameworks, supporting *and implementing* Unified Family Court expansion, coordinating with provinces on limitation period reform, and investing in the infrastructure required to make the remedy workable are all policy options.

Damages quantification

The majority acknowledged that there is "no body of Canadian precedents at this time with which to guide courts in awarding damages" for the new tort. The dissent made the same point more bluntly: lower courts were being given a new cause of action with little practical guidance.

Contrast that with *Jones v. Tsige* (2012), 6 R.F.L. (7th) 247 (Ont. C.A.), where the Ontario Court of Appeal, in recognizing intrusion upon seclusion, gave trial courts a workable remedial framework and suggested that damages would ordinarily be modest — generally not exceeding $20,000 absent proof of actual loss — to promote predictability and consistency in a new area of law. The point is not that the two torts are comparable in seriousness. They plainly are not (although intrusion upon seclusion can certainly be part of the cumulative conduct that comprises this new tort). The point is that in *Jones*, the court recognized a new tort while also giving lower courts a workable remedial framework.

No such cap would be appropriate here. The harms caused by sustained coercive control can be profound and life-altering.

That said, the only concrete number currently available is the $100,000 damages resolution in *Ahluwalia* itself, a case involving serious misconduct, established factual findings, and conceded liability under existing torts. It will be argued that this figure is of limited utility because it was agreed upon by the parties, not fixed by the Supreme Court of Canada as a reasoned damages award. That is true. But it is also the only number we have. That does not make it a benchmark. But it does make it an inevitable reference point, at least in the short term. In the absence of any broader jurisprudence, it would be unrealistic to think parties seeking to minimize damages will not rely on it in early negotiations.

That is precisely why some guidance about methodology, range, relevant factors, aggravating factors, or the interaction between tort damages and overlapping family-law remedies would have been welcome. Instead, trial courts and litigants are being asked to build that framework in real time.

Interaction with statutory remedies

The court stressed that tort and family-law remedies must remain "analytically distinct". On this point, the majority provided what is arguably the decision's most useful practical guidance.

At paragraphs 212 and 216, Justice Kasirer explained that "[t]he equitable or compensatory considerations that underlie equalization provisions do not seek to rectify wrongdoing as between intimate partners in tort, but to account for the parties' contribution in relation to family property. Support regimes, similarly, address economic dependency flowing from the division of labour in the relationship; they look forward, while tort damages compensate for a civil wrong committed in the past.

At paragraph 220, the court endorsed the trial judge's decision to address the tort claim first, observing that resolving the tort claim before statutory claims "may be more conducive to a fulsome appreciation of the record and the facts," and that "[j]udges are best placed to determine the appropriate sequence in which the issues are to be addressed." Findings of intimate partner violence may also be relevant to spousal support (by informing whether misconduct impaired self-sufficiency) and to parenting orders under both the *Divorce Act* and provincial legislation.

That guidance is helpful as far as it goes. But recognizing that tort and family-law remedies must remain analytically distinct is easier than explaining how trial courts are supposed to manage that distinction efficiently in an already overburdened system. The practical overlap remains.

In our view, the most obvious double-recovery concern arises in the economic component of the tort claim, not the dignitary one. Tort lawyers are well accustomed to managing double recovery issues, a basic principle of damages law. General damages for the interference with autonomy, equality, and dignity that sits at the core of this tort have no obvious analogue in equalization or support. They compensate a fundamentally different interest.

But a coercive-control tort claim and a spousal support claim may nonetheless arise from almost identical facts, particularly where abuse has impaired earning capacity or self-sufficiency. Where the tort includes a claim for past or future income loss caused by the abuser's conduct, and the claimant also seeks compensatory spousal support for the same economic disadvantage, trial courts will need to ensure one recovery does not duplicate the other. That will require careful sequencing and clear articulation of what each head of compensation is actually addressing.

Property claims may create their own complexity. A tort claim arising during the marriage may itself become a valuation issue. Depending on timing, contingency, and characterization, it may be argued to be an asset in one spouse's hands and a corresponding liability in the other's.

In Ontario, s. 4(2) of the *Family Law Act*, R.S.O. 1990, c. F.3, may address part of that problem. That section excludes from net family property damages — or a right to damages — for personal injuries, nervous shock, mental distress, or loss of guidance, care and companionship. But whether coercive-control damages fit neatly within that framework may depend on how the tort is pled or how the award is characterized. For example, damages for lost income are not excluded. [For further discussion about this issue, see the July 17, 2023 (2023-28) edition of *TWFL*.]

Forum, procedure, and access to justice

Not every jurisdiction in every province has a Unified Family Court, and in many jurisdictions family litigants face meaningful forum choices depending on the nature of the relief sought.

Ahluwalia is likely to alter that calculus. In some jurisdictions, pursuing the tort may eliminate lower-cost forum options often available only in the Provincial Court, and require litigants to proceed in the Superior Court, which may be procedurally more expensive, complicated, and less accessible. This creates a potential access-to-justice problem: the price of pursuing the tort may be losing the practical advantages of the forum that would otherwise have been available.

This also means that any claimant already involved in litigation in a Provincial Court and wanting to amend their claim to seek damages for intimate partner violence may have to move their case to the Superior Court — and cases that would ordinarily otherwise start in a Provincial Court may be forced to start in the Superior Court. Another possible option would be to run two parallel cases with the damages claim in the Superior Court. Not cheap. Not ideal.

If there were ever an advertisement for the expansion of Unified Family Courts across the country, this decision is it. Without UFC expansion, the practical effect of *Ahluwalia* in many jurisdictions will be to make the most accessible family courts unavailable to many of the litigants the tort is intended to assist.

That leads to a practical question: who will realistically be able to pursue these claims? If the tort proceeds *within* a family proceeding, some litigants may have access to legal aid or other funding structures that would not exist for a standalone civil action. If these claims must proceed outside the ordinary family court structure, will contingency fee arrangements be permitted? Could jury notices become a tactical feature in cases that would otherwise remain within judge-managed family litigation? Procedural fragmentation is far more than a thought experiment; it is a real concern.

These are not just procedural curiosities. A remedy that exists in theory but cannot realistically be pursued by many of the litigants it is meant to assist is not much of an access-to-justice solution, particularly if the anticipated cost of proving the claim dwarfs any likely recovery.

Even where a claim is legally viable, collectability remains a practical concern. Many family litigants simply do not have the assets to satisfy a meaningful tort judgment. An expensive but ultimately uncollectible paper judgment may offer symbolic vindication, but limited practical relief.

That is not to dismiss the value of vindication. Validation matters. Indeed, it may be one of the core functions of this tort.

But economics still matter.

Ahluwalia itself illustrates the point. The divorce proceedings began in 2016. Trial did not occur until 2022, over an 11-day hearing. The damages award was ultimately resolved at $100,000. That may represent meaningful compensation in some cases. But if the practical cost of fully litigating these claims approaches or exceeds the likely recovery — particularly in contested cases involving litigants of modest means — the access-to-justice concern becomes obvious.

Pleadings and procedural gatekeeping

The majority stated that plaintiffs may not need to attach the correct legal label to pleaded facts if those facts disclose a viable cause of action. That flexibility may advance access to justice, but it does create some fairness and case-management challenges in this context. Respondents are entitled to know the case they have to meet. Judges need workable ways to define and narrow issues early. And if coercive-control claims become common, trial courts will need practical screening tools: pleadings motions, summary judgment, mini-trials, and focused case management. But all of those procedures eat scarce court resources.

The procedural implications may extend well beyond pleadings. Novel tort claims may generate demands for particulars, production motions, privilege fights, medical disclosure disputes, bifurcation motions, and other interlocutory skirmishes that increase cost and delay long before a case reaches trial. A remedy intended to improve access to justice should not become an arrow in the quiver of procedural warfare. Ironically, the majority itself recognized that coercive control can continue post-separation through litigation abuse, including vexatious proceedings (para. 194).

One practical mechanism for encouraging proportional litigation already exists: costs. If coercive-control allegations materially increase the complexity, scope, and expense of family litigation, courts may need to make realistic costs awards that reflect that reality — whether against parties who litigate these claims abusively or disproportionately, or against parties who advance serious tort allegations they ultimately fail to establish.

Settlement and litigation behaviour

Settlement depends on some shared ability to properly assess litigation risk; no one goes to trial thinking they are going to lose. Novel claims with uncertain legal boundaries, unclear valuation methodologies, and fact patterns that turn heavily on credibility make that harder. Self-represented litigants may misunderstand the threshold. Less experienced counsel may advance claims that are not legally sustainable. And in some high-conflict cases, the existence of the claim itself may alter negotiation dynamics in ways unrelated to ultimate legal merit — a concern reflected in the majority's caution that ordinary relationship dysfunction should not be mistaken for coercive control.

We saw signs of this after the trial decision. As we noted in our comment on the Court of Appeal's decision in the July 17, 2023 (2023-28) edition of *TWFL*, practitioners were reporting a noticeable increase in family cases involving tort claims (specifically the tort of family violence), along with concerns that the prospect of tort allegations was influencing settlement dynamics. Those dynamics appeared to subside after the Court of Appeal declined to recognize a new tort. There is reason to expect they may return, but this time with the imprimatur of the Supreme Court of Canada.

Prior settlements and releases

What happens to broad releases or consent dismissals resolving prior family litigation? If parties released all claims arising from the marriage, does that language extend to a newly recognized cause of action based on pre-existing conduct? Existing settlement law provides some guidance, but fresh litigation on this issue seems likely. [For further discussion about this issue, see the July 1, 2024 (2024-25), September 1, 2025 (2025-31), and May 18, 2026 (2026-19) editions of *TWFL*.]

A related question is retroactivity. The tort applies to pre-existing conduct — that is the nature of a judicially recognized common law tort, which generally operates retrospectively because courts are understood to declare, rather than create, the common law. The question, then, is not whether the claim exists for conduct predating the decision, but whether it is barred by limitation, release, or *res judicata*.

And what of the many previous claims for the now defunct tort of family violence? If those claims were previously dismissed, do they now live again? That question may generate its own litigation.

The Institutional Concern

Modern Canadian family law deliberately moved away from making spousal misconduct a central organizing feature of litigation, except where legislation expressly makes conduct relevant. That was not accidental. Fault-based inquiries are expensive, inflammatory, and difficult to adjudicate efficiently given the credibility issues they often generate.

Detractors will argue that this decision brings back considerations of conduct.

But the majority is right that the no-fault framework governing support and property does not, in principle, preclude tort claims. The concern is not that family litigation has somehow been free of inflammatory behavioural allegations until now; difficult parenting and family violence cases already often involve intensely contested character, behavioural and credibility evidence. The concern is that family proceedings will now more frequently include a parallel, highly adversarial tort inquiry competing for the same scarce judicial resources and complicating settlement through allegations of patterns of coercive or abusive conduct said to have unfolded over years or decades — allegations that will usually be hotly contested and difficult to resolve without *viva voce* evidence.

There is a broader institutional pattern as well. When the law moves from structured legal tests toward contextual, discretionary inquiries, trial courts and litigants pay the price in time, uncertainty, and evidentiary volume. That is not inherently problematic; much of family law already operates that way. The concern here is cumulative institutional strain.

Family lawyers saw a version of this after *Office of the Children's Lawyer v. Balev* (2018), 5 R.F.L. (8th) 1 (S.C.C.), where a more rule-based approach to habitual residence gave way to a hybrid inquiry into "all relevant considerations arising from the facts of the case at hand." In the May 14, 2018 (2018-19) edition of *TWFL*, Philip Epstein warned that the decision would produce more litigation, lengthier hearings, and greater uncertainty. His warning proved prescient.

The Supreme Court itself later confronted the practical consequences in *Dunmore v. Mehralian* (2025), 15 R.F.L. (9th) 241 (S.C.C.), cautioning against allowing habitual residence disputes to become "needlessly complex" or generate "an undue volume of documentary evidence." But Justice Côté's dissent identified the structural problem directly: an "all-encompassing approach" naturally invites parties to put in everything.

You cannot tell courts to consider everything, and then blame litigants for putting it all in.

A similar structural concern may arise here, potentially on a much larger scale. Child abduction litigation is a relatively narrow subset of family practice. Claims involving allegations of coercive, controlling, or abusive conduct are likely to be far more common.

Why the Hard Cases Still Lie Ahead

The core wrongdoing was not the issue. Mr. Ahluwalia conceded liability under existing torts. The trial judge made the factual findings. The parties settled damages. The dissent suggested this made it "a particularly poor vehicle for making significant legal change."

The case did not present the kinds of contested factual problems that will define the tort's hardest applications. The Supreme Court was not being asked to sort through competing narratives about an unhealthy relationship, assess credibility across decades of disputed interactions, parse ambiguous conduct, or decide whether a pattern crossed the line from major dysfunction into coercive control. The tortious framework was created without the factual messiness that will make its day-to-day application most difficult.

The hard cases will be the ones where everything is disputed, credibility is central, and nuanced findings about years of relationship conduct are unavoidable.

The real difficulty will not be identifying egregious coercive control. It will be distinguishing it from the broad category of bad relationship behaviour that is hurtful, unhealthy, immature, unequal, or deeply dysfunctional — but not tortious.

Consider financial conflict. One spouse controls access to accounts, tracks spending, insists on advance approval for material purchases, demands receipts, and criticizes financial decisions. In one relationship, that may reflect frugality, distrust, ugly marital conflict about money or dedication to retirement planning. In another, the same conduct may amount to economic coercion designed to deprive the other partner of independence and control over their life.

The legal characterization does not turn on the conduct in isolation. It turns on pattern, context, cumulative effect, and credibility. The judge is not simply deciding whether one party felt controlled. The question is whether a reasonable person, fully apprised of the relationship, would conclude that the conduct formed part of a sustained assertion of control depriving the claimant of autonomy, dignity, and equality.

That matters because the real gatekeeping work sits there. Liability does not depend on proof of a separately recognized psychiatric injury, bodily harm, or economic loss. The actionable wrong is the coercive control itself. That is a major conceptual shift. One important gatekeeping feature of many civil claims is the need to prove recognizable compensable harm. Here, much of the gatekeeping burden shifts to how rigorously courts apply the coercive control threshold itself.

The strict objective framing does not solve the line-drawing problem. Objective tests are not necessarily predictable tests. Family lawyers know that ostensibly objective legal standards can still leave judges with significant discretion when their application is intensely contextual and fact-sensitive. The best-interests-of-the-child analysis is an obvious example. This is different, of course, but the structural point is similar. Two judges could consider the same factual record and reasonably reach different conclusions about whether conduct crossed the line into tortious coercive control. The difficulty is not subjectivity in the crude sense. It is that the inquiry is deeply contextual and evaluative. Characterizing relationship conduct is not a mechanical exercise.

Even the best relationships can be messy. Even the most elegant separations can be ugly. Parties can engage in reactive conduct, financial conflict, emotional immaturity, or reciprocal hostility without crossing the legal threshold into tortious coercive control. In some cases, both parties will accuse the other of controlling behaviour. The line between coercive control and "a relationship marked by an imbalance between the parties in the absence of coercive control" will often be genuinely unclear.

The dissent's warning that busy trial judges and self-represented family law litigants will likely struggle with the new test is not alarmism. It may prove prophetic. But this is not to say that the juice is not worth the squeeze, as it likely is; but rather than just ignore the predictable results, we must prepare for them.

This May Only Be the Beginning

At paragraphs 18 and 173, the majority expressly left open the possibility that tort law will continue to evolve to address violence against children and elders, as well as forms of intimate partner abuse not raised in this case. Justice Karakatsanis went further, declining to foreclose liability for conduct falling short of coercive control. There is a principled case for that kind of common law development. If existing legal frameworks do not adequately address wrongs suffered by children, elders, or other vulnerable people within family relationships, the common law may need to develop new tools to reach them. But any such extension is likely to carry similar practical challenges — uncertain damages, credibility-heavy trials, contested fact patterns — into a system already under significant strain.

That prospect should inform how the profession responds. The goal is not to resist the evolution of tort law, but to build the infrastructure that allows it to happen responsibly. If courts, counsel, and rule-makers do not develop workable frameworks now, the difficulties will multiply with each extension of the doctrine.

What Lawyers Should Do Now

Whether the creation of this tort makes you dance with glee or shudder for the future of family law — it is now the law.

Retainers and expectations

Questions from clients are going to come fast and furious, and you have to be ready. So, first and foremost, read the decision. Then read it again. Reading this newsletter is not a substitute for reading the decision itself.

Lawyers need frank conversations with clients — both potential claimants and potential defendants. For claimants, that means explaining the reality: as of now, this is a novel cause of action with no damages framework, uncertain limitation treatment, and no settled procedural roadmap. It will often be expensive to litigate and difficult to settle. For defendants, it means recognizing that the prospect of a tort claim now carries the imprimatur of the Supreme Court of Canada and may materially change litigation risk — and that even post-separation behaviour can fall into the rubric of litigation abuse and coercive control.

Pleadings

Practitioners advancing these claims must plead specific facts supporting each element. While the majority stated that plaintiffs need not "attach the appropriate legal label to the facts" (para. 17), in practice, that flexibility is unlikely to help represented parties. Clear pleading remains critical — for respondents entitled to know the case they must meet, and for the court managing a complex proceeding. Vague and nonspecific allegations of "controlling behaviour" will create problems at every stage. Prudent counsel will map their pleading to the three elements and particularise the conduct alleged, even though the law does not strictly require them to label the tort.

Settlement agreements and releases

Settlement agreements should now expressly consider the new tort. Release language should be drafted with care, and counsel should turn their minds to whether broad settlement language is intended to capture novel tort claims of this kind. And be ready for the incoming question: "When I settled my case, this tort did not exist. Can I make a new claim now?"

Proportionality and case management

These claims are fact-intensive by design and description. In some cases, the amount realistically at stake may be modest compared to the cost of litigating the claim. Hard proportionality questions will need to be asked early. Sequencing should also be addressed early, given the majority's view that tort and statutory claims remain analytically distinct but may proceed in different orders. Without active case management, these claims could consume judicial resources the system does not have.

The Closing

The majority was responding to the harsh realities of an insidious problem. We share the aspiration to do justice for victims of coercive control.

If this remedy delivers what its supporters hope, that will be a meaningful development for family justice.

These are not arguments against the tort. They are arguments for doing the hard implementation work now, rather than assuming the practical questions will solve themselves.

Recognizing a new right is easier than building a system capable of enforcing it fairly, efficiently, and proportionately. If this decision is to deliver on its promise, it will require serious investment from federal, provincial, and territorial governments — in judicial appointments, Unified Family Courts, legal aid, procedural reform, and the broader institutional infrastructure needed to make these claims workable in practice.

The court has recognized a new legal remedy. Now the justice system must ensure it can be used wisely.

Time will tell which version of *Ahluwalia* this becomes.