

## Gender & Law: Does the Battered Woman Syndrome Create Divides in Legal Equality Between Heterosexual and LGBTQIA2S+ Couples in Modern-Day Canadian Criminal Cases?

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### Abstract

Intimate partner violence (IPV) occurs all around the world in all different types of relationships. This phenomenon or rather a more appropriate word, devastation, impacts the lives of all genders and identities. Gender within itself is an evolving social phenomenon holding with it the opportunity to create situations of inequality in various spheres of the social world. The battered woman syndrome (BWS) used in modern-day Canadian criminal court cases exclusively by the bio-sex female is observed to produce gender inequalities wherein cases of intimate partner homicide (IPH) are concerned.

**Keywords:** Battered Woman Syndrome; Gender; Law; Intimate Partner Homicide

### Note

The author of this review would like to note to readers that she does not condone any sort of abuse, violence or homicide in any way shape or form. This review is based solely on reflections of gender equality in consideration of the law. The idea to write this review was hard, as she has been a victim of abuse herself. Notwithstanding, she realized in a university course forcing her to re-evaluate gender inequalities within legal rebuttals, that she should lend the support in light of an injustice noticed, just as she was given support in her case. This review has but the objective to innovate and promote at-most gender equality for all.

### Definitions

Battered Woman Syndrome (BWS) is defined as the self-defence rebuttal used exclusively by women in cases of intimate partner homicide defending their actions based on endured abuse causing post-traumatic stress disorder [10]. BWS was



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presented to the courts as a gender-related issue concerning the physical ability of a man versus a woman – in that a woman does not possess the same stature and strength as compared to a man [16].

Gender is defined as the social expression of one's sex defined by cultural and social determinants [9].

Identity is defined as the "...understanding of one's unique characteristics and how they have been, are and will be manifested across ages, situations, and social rolls." [18].

Intimate Partner Violence (IPV) is defined as any sort of violence (rape, physical violence, stalking, death, and threats) derived from an intimate partner [7].

Intimate Partner Homicide (IPH) refers to the act of murdering one's domestic/romantic partner [7].

Stereotypes are defined as the gender norms/nature associated with one's sex [10].

## Context

Measuring the impact of violence is often confronted with the task of weighing the nature of the act (i.e., intention) and the harm (i.e., consent), physicality, repetition, duration and seriousness [19]. When contemplating violence and gender, harm perpetrated by a woman has been socially constructed to be considered as inherently less impactful and serious than when caused by a man [19]. That being said, when analyzing violence, one must therefore consider the social systems in which violence has been idealized in order to fully comprehend the relevance of gender and the impact of violence [19].

Violence can take multiple forms, i.e., physical, emotional, psychological, verbal, or sexual. The trauma induced by a violent act is subjective. Meaning, the severity and frequency of violence endured by whichever gender should not be measured based on socially constructed ideologies of gender. That is to say, the way one experiences an act of violence is not an objective experience that can be quantified or qualified, but rather subjective in its nature whereby neither man, woman or any other gender identity should be told how to feel based on social dogmas. One gender is not superior or inferior to the other when narrowing in on the experiences of violence endured.

When analyzing the BWS, said rebuttal still used today (2025) in Canadian criminal court cases of IPH, will be considered in this review to uphold gendered notions of violence, bringing with it disproportionate divides between genders in the Canadian criminal justice system wherein gender equality is concerned. Before delving into discussion, the BWS rebuttal must first be deciphered. The rebuttal is cited to consist of the following:

The BWS is not an official diagnosis in the DSM-5 however is associated with elements of post-traumatic stress disorder (PTSD). The BWS is defined as a woman having been beaten in an intimate relationship by a man who repeatedly subjected her to prolonged instances of physical and psychological abuse. The rebuttal is used in instances of IPH when woman resort to murdering their male intimate partner [10].

The BWS rebuttal is premised on the following conditions based on the [18] Canadian case (setting precedent for BWS IPH cases).

"1. environmental factors, 2. attempts to leave or alter the situation, 3. risk factors of the abuser, 4. risk factors of the victim, 5. triggers for violence, and 6. contrary evidence. It is hoped that using this checklist will help experts to cover all the essential elements they must consider in order to conclude that a woman satisfies the criteria for BWS." [20].

Moreover, in 2013 the Canadian Criminal Code experienced amendments wherein the Citizen's Arrest and Self-Defence Act, s. 34(1)(2) will have been used to subsequently also modify requirements of the BWS rebuttal.

“i. he or she believes on reasonable grounds that force is being used against him or her (or another person) or that a threat of force is being made against them or another person;

ii. the act that constitutes the offence is committed for the purpose of defending or protecting himself or herself (or the other person) from that use or threat of force; and

iii. the act committed is reasonable in the circumstances.” [20].

“a) the nature of the force or threat;

b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;

c) the person’s role in the incident;

d) whether any party to the incident used or threatened to use a weapon;

e) the size, age, gender and physical capabilities of the parties to the incident;

f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat; any history of interaction or communication between the parties to the incident;

g) the nature and proportionality of the person’s response to the use or threat of force; and

h) Whether the act committed was in response to a use or threat of force that the person knew was lawful” [20].

Section 34(1)(2) in context of the BWS rebuttal still in 2013 is observed to continue in upholding divisions for all genders. Where in conjunction with such, Supreme Court of Canada (SCC) Justice Wilson on the topic emphasized the following (stressing attention towards to the continued use of uni-sex discourse presented):

“...duty to address (1) the existence of complex PTSD, (2) the existence of BWS, (3) the uniqueness of the events leading to the violent act, (4) the woman’s psychological state and apprehension of death or harm, and (5) reasons why the woman remained in the relationship... This evidence can provide the jury with a framework to assess whether a woman’s response in killing her abuser was reasonable, according to Section 34.” [20].

Considering all of such, the BWS rebuttal in classical societies provided the bio-sex female with a self-defence rebuttal fostering an opportunity to seek legal equality in a criminal system that constituted already pre-existing notions of gender discrimination favoring patriarchy for majority of charges and crimes within the Canadian law. Despite such, the BWS rebuttal wherein advanced contemporary societies are analyzed, fails to highlight the victimization of abused men and other gender identities (i.e., LGBTQIA2S+ community members) wherein the classical self-defence rebuttal actually stands to create gender inequality rather than promote gender equality within the eye of the law.

## Objective

This article seeks to critically analyze via a socio-legal lens how the BWS rebuttal still used today in modern-day Canadian criminal courts cases of IPH perpetuates gender inequalities. In this sense, this article has the objective to highlight how while there exists a considerable volume of studies that have discussed the use of the BWS in relation to female defendants, little attention has been brought to how the BWS is a defence that excludes men and LGBTQIA2S+ individuals.

## Introduction

The [1] case was the first Canadian criminal court proceeding that accepted the use of the BWS self-defence rebuttal in an IPH case. The case highlights how the turbulent and violent relationship between the accused (female) and her partner (the deceased, male) was argued to have led the accused to shoot the deceased in the back of the head with a shot-gun in 1986 when the accused would have supposedly feared for her life and saw no other way to escape the violent relationship other than by taking the life of her then intimate male partner. The accused was declared by an expert witness to have been suffering from PTSD, where shooting the deceased was a final act of desperation from a woman whom sincerely believed that she would have been murdered that evening without any other means to escape other than by murder. Such led to the acquittal of the accused, provoking an uproar within the legal sphere and a revolutionary decision taken by the SCC.

It should be noted that the [1] contained within it, intriguing facts whereby the couple's relationship had been reported to be frequented by incidents of IPV perpetuated by both parties; as well as both being consumers (alcohol and cannabis), of which the client was intoxicated and under on the night of the crime. The [1] case is the first step in considering how the BWS rebuttal used in Canadian criminal court cases of IPH preserves incidents of gender inequality.

The [2] case is another example. The accused (female) murdered her male intimate partner by shooting him to death while asleep in their home in 1995. The accused was convicted of manslaughter and was sentenced to serve two years less a day with a number of conditions at-home via the use of the BWS rebuttal. The accused claimed that she was a battered-woman who acted in self-defence after being verbally, physically, and sexually abused by the deceased (whom was distinctly only about a foot taller and about 100 pounds heavier than the accused; as well as was an RCMP industrial psychologist) throughout their marriage, and who would have threatened the accused with sexually assaulting their daughter which the accused used to claim self-defence under BWS. Strikingly and troubling, this case did not have any corroborative evidence (i.e., no

witnesses or evidence to confirm claimed experienced violence – non-existent hospital records or police reports, nothing known to family or friends; neither any visible markings of abuse either for example). Rather all evidence presented by the defence was based solely on the testimony of the accused (one could say hear-say).

Moreover, the [3] case presents the situation where the accused (female) murdered her male intimate partner by stabbing him directly in the heart after an argument in 2013. The [3] case is particular for the accused used the BWS rebuttal and received a significantly reduced sentence as well as was charged of manslaughter instead of murder 1 or 2. The case is noteworthy in delineating the fact that there existed a recorded history of violence perpetuated by the accused towards the deceased, in addition to a recorded history of substance abuse (alcohol) between the two parties.

Furthermore, the [4] case highlights the situation where the accused (female) was charged with manslaughter and acquitted after murdering her husband by stabbing him in 2018. The acquittal was granted in reason that the Crown was not able to prove beyond a reasonable doubt that the accused was the one to have stabbed the deceased despite the accused's testimony to having seen her husband then going to get a cooking knife from the kitchen. The accused claimed to not have any recollection or memory of having stabbed her husband. Notably, the accused was said to have attacked the deceased without any provocation (the deceased was said to have been coming back into the house from his car the night of the altercation); in addition to the noted fact that the accused was reported to have had consumed methamphetamines at the time of the crime.

The [4] case is particular as the accused not only suffered from childhood abuse from her parents (physical), as well as had been sexually abused from a distant family member, the accused continued to be abused during her adulthood by the deceased (physically, emotionally, and sexually) reportedly throughout the entirety of their marriage. Where additional important elements rest in this case is that the accused had a restraining order, a no-contact order, and even had pursued charges of assault perpetuated by the deceased where he had been imprisoned at some point. In

addition to such, after the deceased had served his prison sentence, the deceased went back to live with the accused after continuing to utter threats and break the no-contact order whilst in jail. Withal, the accused had reported defending herself with weapons in the past against the deceased as well.

As outlined and portrayed in these four Canadian criminal court cases invoking the BWS rebuttal in proceedings of IPH cases, all importantly coming from different time periods (1990, 1998, 2016, and 2021) showcases how the BWS rebuttal upholds and dignifies discriminatory gender practices against male and LGBTQIA2S+ community members.

Details from the four cases are observed to contain certain similarities as well as unique components that can be considered arbitrary in terms of the overarching objective(s) and purposes of the BWS rebuttal. Whereby the act of self-defence argued in said four cases was seemingly not always used in situations where the accused (a female) was in a life-threatening situation or actively being abused, the accused was under the influence of an illicit substance, evidence used to defend actions was based off of essentially hear-say, certain attempts to leave the relationship had been taken, as well as incidents of reciprocated violence perpetrated by the female accused had also been reported in certain cases. When considering the various points listed above, one ponders on whether men and LGBTQIA2S+ community members would receive the same type of treatment when arguing self-defence in cases of IPH using the BWS rebuttal.

## **Feminism & Gendered Notions of Violence versus the Bws Rebuttal**

When analyzing and evaluating the BWS, it is important to consider evolutions and types of feminist discourses.

[5] Discussed radical feminists such as Catherine Mackinnon who was explained to support the belief that the state of law and society are “male”, isolating women within greater patriarchal institutions where women are observed to not be provided with the equal opportunity to thrive within society [5]. Continues to articulate how Mackinnon

argued that laws should accommodate women, making the pursuit of justice only then gender-neutral [5]. Considering such, when analyzing the biological facts that radical feminists support, in that men and women are inherently different and men by nature are aggressive and dangerous as [5] cites, radical feminists in light of the BWS rebuttal ultimately contradict their claims. For it can be argued that within their advocacy for a self-defence rebuttal (i.e., BWS) that exclusively protects women who kill their male intimate partners, disregards the victimization of males and other LGBTQIA2S+ individuals from woman abusers whom are clearly based on the act of murder, indeed be capable of violence that as per according to radical feminists, attribute strictly to a “male characteristic” [5]. The claims that women are inherently less violent and aggressive than men does not hold relevance in modern-day society wherein the BWS is concerned when contemplating social evolution of gender which has importantly and significantly evolved.

With the coming of Globalization, the male gender is observed to have seemingly entered into a sort of crisis wherein profound changes related to work, employment, education, and family relationships have drastically changed where gender roles and identities are concerned [17]. Where the male gender during said time period in combination with the various women’s movements during the Post-Industrialization time period, men began to become less visible as women gained more power, autonomy, and legal rights [17]. [6] explain how during this time period, historical notions of gender persisted to exist, leading men to continue their attempts at living up to established expectations of how a man should be and act (i.e., the ‘macho’ figure) whilst woman took on new ideations of their gender characteristics [17].

[21] Literate through their review of three key feminist paradigms, how feminists have worked hard to categorize male violence as unacceptable and unjustifiable while female violence is always justifiable in the spirit of self-defence [7]. The authors point out how the law instills constraining control over wife beating by men via vigorous social prohibitions and legal sanctions whilst indifferent to men, such is nonexistent in terms of protecting men from being aggressed by women [7]. In concordance with [5,7] discuss how radical feminist discourses produce subjective,

cultural dogmas that defend generalizations of gender claiming that only men are, can be violent and that females are but victims who are incapable of violence ultimately ignoring the ability and existence of female violence altogether [5, 7]. Noting also that [6] found that feminist jurisprudence discredits and undermines male abuse, encouraging social messages aimed at silencing men's victimization [6].

[6] Cite a number of research studies that confirm findings that feminist advocacy of female violence belittling towards male IPV victimization as caused by a woman [9]. Wherein findings also questioned social opinions on the matter of male IPV victimization, where study results found that social opinions and perspectives of such as being "less serious when performed by a female" [9]. In addition to such, [22] in their experimental research found that society tends to lend more sympathy towards women than men in cases of IPH and IPV, reporting results finding that when a husband is abused, such was reported as being perceived/considered as less serious than when a female is abused by her husband [10]. The authors also found that study respondents were more likely to call the police if they heard a woman being abused than if or when a man was being abused; upholding the presented discourse that it is harder to admit that a man has been battered "...so substantially that he kills [his female partner] in self-defence." [10]. Furthermore, [22] also report in their findings that society typically finds that men are more responsible for their victimization whereas women are not, hence attributing more sympathy towards woman who are abused and kill their male partner as opposed to men who are abused and kill their female partner [10].

In conjunction with such, research also finds that notions of gender cripple facts of male victimization, supporting unequal perceptions and opinions of husband abuse through hegemonic and ideological constructions of gender [10]. Statistics derived from studies investigating male IPV victimization caused by females report majority, to present inaccurate data [23]. Said inaccuracy of data is explained to host within itself a large margin of error where research evaluating this topic also finds that men are more likely to not report incidents of domestic and/or general abuse as perpetrated by woman [6, 22]. Importantly, [15] articulate how the victimization of battered husbands remains a hidden

phenomenon as a consequence of cultural scripts that force men to stay silent by the demands of feminist movements that inherently ignore the ability of woman to perpetuate incidents of violence and locate IPV and IPH as an exclusive repercussion of patriarchal dominance [11]. [8] Also report that women are just as violent as men [8]. In conjunction with such, findings from [8] shed light on the idea that the BWS rebuttal does not precisely portray patterns of IPV that occur in relationships, where the authors present the assumption that majority of IPV research projects have been based primarily on woman's perspectives/experiences of IPV and do not consider incidents of male IPV victimization [11].

Curiously fascinatingly to find that a Canadian Government study completed in 2002 reporting on men attempting to use a self-defence plea wherein cases of IPV or IPH were concerned, were only majority successful in obtaining such when mental health (specifically schizophrenia) was a mitigating factor [24].

Discourses of gender in Canadian modern-day society have experienced important evolution. Canadian modern-day society the notion of gender no longer considers only two types of sex (i.e., male and female) nor only two relationship types (i.e., heterosexual and homosexual couples). Relationship and gender types have progressed to include a wide variety of categories (for example, queer, non-binary, transgender, etc.), consequently thus also altering the social structure and general construct of gender roles and identities (hence the LGBTQIA2S+ community). Considering such, classical dogmas of gender (i.e., male and female) can be argued to no longer hold true to the stereotypes that have been classically argued by feminist efforts, delegitimizing and discrediting classical notions of male and female gender roles and expectations. To elaborate, in reflecting on the various social movements discussed in terms of reinventing gender, identity, and sexuality in modern-day society, socially constructed stereotypes of gender can be considered to no longer uphold dominant classical ideations and can actually be contemplated to actually resist gender norms, lending progress towards the fight for greater freedom within society [24]; something which can be argued to go against the overall goal of what the BWS rebuttal stands for as per according to radical feminists. The evolution of gender and

the LGBTQIA2S+ community is partly in benediction of certain feminist efforts. The ideals fought for in terms of gender and identity equality, expansion, and agency through these movements has provided a voice for gender to be challenged, redefined, and reconceptualised; consequently leaving opportunity to question certain previous inequalities that for a certain time period, provided gender equality however in current day re-create a new inequality (i.e., BWS).

## Discussion

Considering all of such, violence and murder should be taken with a grain of salt when analyzing such in terms of gender. Whereby one gender should not be provided with a reduced sentence or lesser consequences for having caused death. Notions of gender and identity have evolved to more complex ideologies in modern-day Canadian society. Classical notions of gender (i.e., male versus female), feminists have succeeded in both creating and dismantling certain gender binaries within society and the law to a distinctive degree. Notwithstanding, have also consequently created other inequalities in the process. Feminist activism can be considered to have instilled faulty ideas of gender characteristics that have provoked misconstrued opinions of men and other LGBTQIA2S+ identities when analyzing Canadian criminal court cases of IPH. Feminist pursuits have been able to characterize and instil the male gender and other identities as lesser in this situation, undermining their experienced victimization in cases violence and homicide.

Contained within the introduction of this review, four Canadian criminal court cases using the BWS rebuttal in proceedings of IPH were presented. Certain outstanding elements noticed in the cases were outlined and questioned towards the validity that such would have held had the accused been of male gender or LGBTQIA2S+ identity. In discussion, other examples of where either a plea of self-defence and/or where the BWS rebuttal was invoked in cases of IPH further present disconcerting faults wherein gender and the law is considered when navigating through different time periods.

[5] The accused (female) shot the deceased (male).

The couple had been married for 19 years and had two children together. The couple's relationship was turbulent, frequented with incidents ranging from physical, sexual, psychological, and emotional abuse perpetuated by the deceased. The deceased was a police informant, where the deceased had been briefed by the police that the accused had placed a complaint against him (assault). Said complaint would have been reported to escalate the violence within the relationship towards the accused. A few months prior to the crime, the deceased had left the accused to go and live with his girlfriend. On the day of the shooting in 1991, the accused was scheduled to go to a medical center to pick-up drugs for the deceased's undercover work. Where after driving to the medical center together, the accused shot the deceased with a gun taken from the deceased's cabinet. The accused would have then proceeded to get into a taxi en route to the deceased's girlfriend's home where the accused will have proceeded to shoot and then stab the deceased's girlfriend with a knife (she survived and testified at trial). The accused was charged with second degree murder for the homicide of the deceased and attempted murder for the deceased's girlfriend. At trial, the jury suggested that the accused be served a minimum sentence given the extensive abuse that she had suffered from the deceased by invoking the BWS rebuttal.

Interestingly, this case contains within it questionably stupefying elements in using the BWS rebuttal for a lesser sentence than what would normally be awarded for a murder charge. When considering the BWS rebuttal and elements of the case, the accused and deceased were not a couple, violence for a period of time did not take place. When considering the facts mentioned, it should be contemplated whether or not that without a reasonable doubt, as a reasonable person, in the same circumstance have perceived the events in the same way? Meaning, had the roles been reversed and the accused been a male or an individual of the LGBTQIA2S+ community and the deceased a female, would the same consideration have been given in the case of no actual threat being present at the time of the murder committed.

[9] The accused (male) was charged with second degree murder after having shot the deceased (male) (assumed to be an intimate partner of sort – homosexual rela-

tionship) in the back of the head while the deceased was sleeping in the accused's bed. Prior too, the deceased as per according to the accused, had arrived at his apartment after having fought with his girlfriend where the deceased would have said to the accused – “Yea, we're going to have some fun tonight, you and me” whilst flicking a knife in front of the accused's face [13]. Both the accused and deceased had consumed cannabis on the night of the altercation. The accused attempted to plea the homicide committed as an act of self-defense in reason of “having developed a fear of the deceased throughout their long and difficult relationship” (the relationship was frequented by acts of violence towards the accused from the deceased) [13]. In addition, the accused being a victim of recurrent childhood violence/abuse, the accused due to childhood trauma as well as adult trauma, was reported to often be at the vulnerability of the deceased as stated during the trial. The accused was denied the plea of self-defense despite having had a psychiatrist present expert testimony stating that the “accused was suffering from acute anxiety at the time of the shooting” [13]. Interestingly, the judge's reasoning for refusing the plea of self-defense was predicated on the following:

“Would a reasonable person, in the same circumstances, have perceived the events in the same way?”

I suggest that you use the same reasoning when you consider the second element: reasonable apprehension of a risk of death or grievous bodily harm. The accused used the word fear quite often in his testimony. Does the evidence demonstrate a history of violence between him and Jetté? There is certainly evidence of violence on two occasions, each one involving a theft. Other than that, is there reason to believe that the accused apprehended a risk of death? You have all sorts of evidence to help you. You have the testimony about Jetté. You have testimony that he was a violent man, an individual who was very fond of fighting. You have his criminal record, which, as the Crown pointed out, shows no violent crimes. You have the period of time for which the accused had known Jetté. And you have evidence of a relationship that was stormy at times and harmonious at others.” [13].

This case presents a sort of assumed LGBTQI-A2S+ IPH case that features an interesting outcome in the

fact that despite there having existed a history of violence perpetrated towards the accused by the deceased, a provoking action directed towards the accused from the deceased on the night of the crime, a history of PTSD from experienced violent/abusive childhood upbringing, a plea of self-defense was rejected and adjudicated using gender segregating remarks by the presiding judge. In reflection, one would have to contemplate given the gender complex in which the murder was committed (i.e., a sort of homosexual partnership), would this same rejection of facts have been treated the same way if this were to be a case where the accused been a female invoking the BWS rebuttal and the deceased a male? It should also be advertised that the accused and deceased were both intoxicated and under the influence of cannabis (similar to the *R. v. Lavallee* case – where such did not seem to be an element considered wherein the accused was female). In introspection towards the discourse held by the presiding judge, evidence of gender discrimination becomes apparent when speculating “Would a reasonable person, in the same circumstances, have perceived the events in the same way?”. What would a “reasonable person” be in this situation if the accused had been female and experienced the various prior injustices that the male accused had undergone?

[1] The accused (female) murdered the deceased (male), her husband, by shooting him twice in their home in 2014. The accused will have also set fire to their home and tampered with human remains (deceased's body). The accused pleaded self-defense using the BWS rebuttal in reason of extensive violence experienced in their first relationship. The crime has been committed during their second relationship, where there existing no evidence of violence during this time. The relationship experienced frequent instability – couple met around 1988, married in 1996, separated about 3 years later (1999), turbulent marriage until divorced in 2000, 2012 relationship was mended and the couple began to live together again. In 2012 upon living together again, the accused will have been reported to have been introduced to crack cocaine by the deceased. The day of the murder, the deceased was reported to have uttered threats to the accused and fired a rifle before leaving to procure crack. Upon the deceased returning back home, the accused will have warned the deceased that he is no longer welcome in her house, where the accused reported that the deceased

would have motioned to retrieve his pistol on the table where the accused would have reached for the gun first and shot the deceased twice.

This case is peculiar in that the accused's facts and recollection on what led her to shoot the deceased on the day of the murder were inconsistent. Where the accused would have changed discourses during her testimony on the facts leading her to shoot the deceased. The version in which the courts rendered the decision of the case are mentioned above. Notwithstanding such, the accused described the situation as "be killed or kill" [19]. Notably interesting features of this case include the accused having successfully left the abusive relationship for a significant period of time (12 years), having gotten restraining orders against the deceased in the past, having been examined and deemed to portray 'atypical behaviours of BWS', as well as had reported drug consumption habits. In considering these case details, it remains striking when fathoming whether a male or LGBTQIA2S+ community member would have presented a plea of self-defense under the same circumstances whether or not the same treatment in consideration of the facts would have been offered when contemplating gender and violence.

Furthermore, and interestingly, the United States of America has as per according to research, already begun to notice certain divides that the BWS rebuttal brings about and have taken proactive efforts in attempting to rectify the inequalities invoked by such. Research conducted by [12] calls attention to the American trajectory of the BWS rebuttal where in current day the BWS rebuttal in America has slowly progressed to consider other genders and identities within its use in court cases of IPH and has made progressive efforts to re-consider the title of the BWS, using terms such as "on battering and its effects", "battering syndrome", "battered partner syndrome", "battered person syndrome" instead to be more inclusive towards other genders and identities [15]. Also cite the use of new terminology in reason that the word "syndrome", which can lend misleading connotations towards a mental deficit which might not necessary be an accurate portrayal of the victim in question; contrary to Canada where the BWS continues to be used uniquely for woman [15, 20, and 25]. With all considered, the BWS rebuttal used in Canadian modern-day criminal

court cases in proceedings of IPH require amendments in which support contemporary notions of gender providing more inclusivity in the aim of justice and equality.

## Conclusion

"R. v. Ferguson, [1997] O.J. No.2488 (O.C.J.(G.D.)): "While it is tempting to say that the courts treat men more severely than they do women, when a person kills his or her spouse, none of the factual circumstances involved in the cases where a man killed his spouse even remotely resembles the facts in the cases where a woman was the offender and the man a victim." [23].

The quote above sends as a powerful message for the concluding remarks of this review. The quote within itself, brings forth the very essence of what this review seeks to accomplish – scrutinizing the seemingly entrenched gender inequalities embedded within arbitrated Canadian criminal court case presiding of incidents of IPH using the BWS rebuttal. Considering all of such, when analyzing the BWS rebuttal, it becomes evident how the rebuttal perpetuates gender inequalities within the law. The fact alone that the defence is exclusively used by women is discriminatory within itself. Moreover, when considering research findings in terms of faulty feminist claims and how such informs and moulds social opinions and perceptions of individuals judging cases of IPH wherein the male or LGBTQIA2S+ individuals are the perpetrators, it becomes grossly evident how stereotypes of gender and identity participate in facilitating and preserving gender inequalities within Canadian criminal court cases of IPH still today in modern-day society.

## Future Research

This review focuses on male and LGBTQIA2S+ gender inequalities entrenched in the BWS rebuttal as used in Canadian criminal cases of IPH in modern-day society. Future research can use this review in efforts to advocate to have the BWS rebuttal renamed and reconsidered within its use in Canadian criminal court cases preceding on incidents of IPH to be inclusive for all genders in Canada providing proportionate opportunity to seek justice in the name of gender equality. Future research can also utilize this review

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in efforts to expand on American research already put fourth at investigating and evaluating how the BWS rebuttal perpetuates gender inequalities within Canadian criminal court cases presiding on incidents of IPH as Canada seems to be lacking in this front of analysis.

### **Declarations**

None.

### **Ethical Approval & Consent Statement**

Not applicable – no research subjects.

### **Funding**

None.

### **Availability Of Data and Materials**

Information and referenced articles and statistics used throughout this review can be accessed online.

### **Competing Interests**

None.

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