

ACCESS TO JUSTICE FOR VICTIMS OF ECONOMIC EXPLOITATION

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Research in intimate partner violence (IPV) has established that economic abuse, including economic exploitation, is an important form of IPV that is often used to trap victims in an abusive relationship. Though victims of all types of IPV encounter particular barriers to accessing justice, there are particular issues for those victimized by economic exploitation. This article explains the prevalence and consequences of economic exploitation and explores the indicators that victims lack access to justice. It proposes the primary obstacles victims of economic exploitation encounter and urges specific actions to assist lawyers, judges, and legislators in recognizing economic exploitation in intimate partner relationships and promoting appropriate remedies. This is particularly important for women, which data analysis indicates are at greater risk for this type of abuse.

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I. INTRODUCTION

Intimate partner violence (IPV) is accepted as a significant social concern. A variety of forms of IPV are now recognized, including physical, sexual, psychological, emotional, and economic.¹ Economic abuse² is a form of IPV where the abuser controls, interferes with, or exploits the victim's ability to acquire, use, and maintain economic resources.³ This form of abuse is increasingly important within studies of IPV, particularly as a mechanism used to coerce or manipulate a victim into remaining in a relationship characterized by other forms of IPV.⁴

Three distinct subtypes of economic abuse are recognized:⁵

1. Economic control — The abuser controls the victim's access to and use of resources, including keeping financial information from the victim and requiring the victim to ask for money. Abusers using economic control often maintain complete control of money and financial decisions.⁶
2. Employment sabotage — The abuser restricts the victim's ability to work or attend school, such as preventing the victim from going to work, demanding the victim quit, or harassing the victim at work or school.
3. Economic exploitation — The abuser exploits the victim's economic or financial resources for the abuser's own benefit. This includes coercively or fraudulently obtaining debt for which the victim is liable, purposely paying bills for which the victim is liable late or not at all, and structuring financial dynamics so that irresponsible spending or failure to pay bills will impact only the victim.⁷

This article focuses on economic exploitation as, at present, it more clearly engages the law than the other two subtypes.⁸

¹ Amanda M Stylianou, "Economic Abuse within Intimate Partner Violence: A Review of the Literature" (2018) 33:1 *Violence & Victims* 3 [Stylianou, "Economic Abuse"].

² It is also called "financial abuse," though the terms are not always intended synonymously. This article uses "economic abuse" to emphasize that it involves all economic resources, not just financial resources.

³ Adrienne E Adams et al, "Development of the Scale of Economic Abuse" (2008) 14:5 *Violence Against Women* 563 at 564 [Adams et al, "Scale of Economic Abuse"].

⁴ For a review of this literature see Judy L Postmus et al, "Economic Abuse as an Invisible Form of Domestic Violence: A Multicountry Review" (2020) 21:2 *Trauma, Violence, & Abuse* 261 [Postmus et al, "Economic Abuse as an Invisible Form of Domestic Violence"].

⁵ Judy L Postmus et al, "Measuring Economic Abuse in the Lives of Survivors: Revising the Scale of Economic Abuse" (2016) 22:6 *Violence Against Women* 692 at 700. See also Cynthia K Sanders, "Financial Capability Among Survivors of Domestic Violence" in JM Birkenmaier, M Sherraden, & JC Curley, eds, *Financial Capability and Asset Development: Research, Education, Policy, and Practice* (Oxford: Oxford University Press, 2015) at 87.

⁶ Cynthia K Sanders, "Economic Abuse in the Lives of Women Abused by an Intimate Partner: A Qualitative Study" (2015) 21:1 *Violence Against Women* 3 at 12 [Sanders, "Lives of Women Abused"].

⁷ *Ibid* at 19.

⁸ This is unfortunate, as economic control is the most common subtype and is effectively employed to trap victims in abusive relationships. This is particularly problematic against women, as social norms and gender financial roles can encourage economic control. See e.g. Rachel J Voth Schrag, "Experiences of Economic Abuse in the Community: Listening to Survivor Voices" (2019) 34:3 *J Women & Soc Work* 313.

The economic resources that an abuser can exploit include the victim's credit score, reputation, personal information (including Social Insurance Number), and existing lines of credit or credit cards for which the victim is liable. The abuser uses these resources to obtain a benefit such as borrowed money, a mobile phone contract, or electricity and other utilities. By intentionally failing to meet the corresponding financial obligations or by preventing the victim from meeting those obligations, whether through coercion or leaving the victim ignorant of them, the abuser damages the victim's economic resources. When there is a pattern of economic exploitation in an intimate relationship, the abuser effectively traps the victim.⁹ This article will refer to such ongoing abuse as "control exploitation." Economic exploitation also occurs when a relationship breaks down. This abuse does not trap the victim in the relationship, but still has significant consequences (to be discussed below). This article will refer to such abuse as "revenge exploitation."

A. LEGAL ISSUES FOR IPV VICTIMS

Victims of IPV generally and of economic exploitation specifically encounter numerous obstacles to using the legal system for help. Access to justice in general has been a popular topic now for at least a decade, gaining importance both in academic discussion and in Supreme Court of Canada decisions such as *Hryniak v Mauldin*.¹⁰ Accessing justice is particularly complicated for victims of IPV, as they encounter obstacles beyond those routinely identified in the literature on access to justice generally.¹¹ These complications have been studied by numerous academics from a variety of perspectives.

One primary obstacle has been variously referred to as "paper abuse," "procedural stalking," or "legal abuse." Abusers continue victimization after the relationship has terminated through misuse of the legal system. Legal engagement forces contact between the victim and the abuser, giving a forum for continued exertion of control.¹² Heather Douglas studied this phenomenon by interviewing 65 women who engaged with the legal system as a result of violence in their intimate relationships. She concluded that "engagement with the legal system may be experienced by one party as abuse at the same time that the other party justifies their engagement as a right."¹³ This is particularly problematic because victims of IPV often need to engage the law for protection from further abuse, for assistance in leaving the abuser, and to determine issues such as parenting arrangements and property settlement that cannot be resolved without legal system intervention.¹⁴ Thus, IPV victims are required

⁹ Sanders, "Lives of Women Abused," *supra* note 6; Voth Schrag, *ibid*.

¹⁰ *Hryniak v Mauldin*, 2014 SCC 7.

¹¹ Janet E Mosher, "Grounding Access to Justice Theory and Practice in the Experiences of Women Abused by Their Intimate Partners" (2015) 32:2 Windsor YB Access Just 149 at 150–51.

¹² Susan L Miller & Nicole L Smolter, "'Paper Abuse': When All Else Fails, Batterers Use Procedural Stalking" (2011) 17:5 Violence Against Women 637 at 638.

¹³ Heather Douglas, "Legal Systems Abuse and Coercive Control" (2018) 18:1 Criminology & Crim J 84 at 85.

¹⁴ Vivienne Elizabeth et al, "He's Just Swapped His Fists for the System: The Governance of Gender through Custody Law" (2012) 26:2 Gender & Soc 239; Lesley Laing, "Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System" (2017) 23:11 Violence Against Women 1314; Ruth Lewis et al, "Law's Progressive Potential: The Value of Engagement with the Law for Domestic Violence" (2001) 10:1 Soc & Leg Stud 105.

to engage with the legal process, yet misuse by abusers and inappropriate responses by legal actors turn it into a form of secondary victimization.¹⁵

Other obstacles arise from the structure of the laws, systems, and institutions relevant to IPV situations. Jennifer Koshan demonstrated how the overlap and intersection between laws, policies, and justice system components make accessing justice difficult for litigants in domestic violence matters.¹⁶ She provided a comprehensive map of laws that pertain to domestic violence in Alberta to illustrate the unnecessary complications and gaps in justice. Jane Stoever similarly considered obstacles in laws and policies themselves by examining procedural obstacles to satisfying service requirements in applications for domestic violence protection orders.¹⁷ She found that prohibitions on substitutional service unnecessarily increased the complexity and difficulty for IPV victims to seek protection from further abuse.

A more recent study assessed how procedures initiated during the COVID-19 pandemic impacted access to justice for abuse victims.¹⁸ The researchers found that as courts needed to triage applications by abuse victims, they continued their tendency to focus on incident-based physical violence rather than patterns of coercive control to gauge the severity and urgency of a situation. This significantly impeded the ability of high-risk victims to obtain court orders to ensure their safety.

These studies and others in this area of research focus on access to justice for IPV victims generally. This article focuses on the obstacles encountered by victims of economic exploitation in obtaining effective redress for the economic and financial harms suffered. It demonstrates that such victims encounter systemic obstacles, lack of understanding of this form of abuse by the legal profession, and ineffective remedies. These problems can be addressed by educating the legal profession and the judiciary, by employing best practices in the practice of law, and by legislative reform.

The next section explains the need for victims of economic exploitation to access the civil justice system by demonstrating the prevalence of this form of abuse and explaining its consequences. Section III establishes that victims of economic exploitation are not receiving adequate help from the legal system. This is followed by a section proposing reasons for the legal system's failure in adequately assisting these IPV victims. Before concluding, this article proposes initiatives to address these failings.

¹⁵ Ruth Busch et al, "The Gap: Battered Women's Experience of the Justice System in New Zealand" (1995) 8:1 CJWL 190; Joseph Roy Gillis et al, "System Obstacles to Battered Women's Participation in the Judicial System: When Will the Status Quo Change?" (2006) 12:12 Violence Against Women 1150; Jennifer L Hartman & Joanne Belknap, "Beyond the Gatekeepers: Court Professionals' Self-Reported Attitudes about and Experiences with Misdemeanor Domestic Violence Cases" (2003) 30:3 Crim Justice & Behavior 349; Judith L Herman, "The Mental Health of Crime Victims: Impact of Legal Intervention" (2003) 16:2 J of Traumatic Stress 159; Rosemary Hunter, "Narratives of Domestic Violence" (2006) 28 Sydney L Rev 733; Lesley Laing, *ibid*; James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses* (Boston: Northeastern University Press, 1999).

¹⁶ Jennifer Koshan, "Mapping Domestic Violence Law and Policy in Alberta: Intersections and Access to Justice" (2021) 58:3 Alta L Rev 521.

¹⁷ Jane K Stoever, "Access to Safety and Justice: Service of Process in Domestic Violence Cases" (2019) 94:1 Wash L Rev 333.

¹⁸ Jennifer Koshan et al, "COVID-19, the Shadow Pandemic, and Access to Justice for Survivors of Domestic Violence" (2020) 57:3 Osgoode Hall LJ 739.

II. THE NEED FOR JUSTICE IN ECONOMIC EXPLOITATION

There is a need to address access to justice for victims of economic exploitation both because this form of abuse is prevalent, and because its consequences are severe. This section will first review evidence of the prevalence of economic abuse generally and economic exploitation specifically before explaining its harms.

A. THE PREVALENCE OF ECONOMIC ABUSE AND ECONOMIC EXPLOITATION

Researchers have employed several methods of measuring the prevalence of economic abuse, primarily among female victims of other forms of IPV. This is useful for estimating the incidence of control exploitation. One survey of female victims of physical, sexual, and emotional abuse found that 99 percent of sample subjects had also experienced economic abuse.¹⁹ In another study, researchers interviewed participants in a financial literacy program for females experiencing IPV or otherwise needing support services. They found that 79 percent of participants had experienced economic control; 78 percent had experienced employment sabotage; and 79 percent had experienced economic exploitation.²⁰ Similar surveys or interview methods have been used in other scholarly works studying economic abuse among low-income women who are victims of other forms of IPV, obtaining similar results.²¹

Other studies have been more general in focus. One study of the prevalence of economic abuse among a general community in Australia used secondary data from a survey focused on the broader issue of emotional abuse.²² In analyzing the data, the researchers concluded 15.7 percent of female respondents and 7.1 percent of male respondents had experienced economic abuse.

There have been four studies of economic abuse in Canada. One study had a narrow focus, surveying only victims of IPV aged 60 and older.²³ Another used secondary data from the Canadian General Social Survey.²⁴ The third surveyed victims of IPV in the Canadian Armed

¹⁹ Adams et al, "Scale of Economic Abuse," *supra* note 3.

²⁰ Judy L Postmus et al, "Understanding Economic Abuse in the Lives of Survivors" (2012) 27:3 J Interpersonal Violence 411 [Postmus et al, "Understanding Economic Abuse"].

²¹ Adrienne E Adams et al, "The Revised Scale of Economic Abuse (SEA2): Development and Initial Psychometric Testing of an Updated Measure of Economic Abuse in Intimate Relationships" (2020) 10:3 Psychology Violence 268; S Anitha, "Understanding Economic Abuse through an Intersectional Lens: Financial Abuse, Control, and Exploitation of Women's Productive and Reproductive Labor" (2019) 25:15 Violence Against Women 1854; K Christy & Valandra, "A Multi-Systems Life Course Perspective of Economic Abuse" (2017) 18:1 Advances in Soc Work 80; Postmus et al "Economic Abuse as an Invisible Form of Domestic Violence," *supra* note 4; Postmus et al, "Understanding Economic Abuse," *supra* note 20; Stylianou, "Economic Abuse," *supra* note 1; Amanda M Stylianou et al, "Measuring Abusive Behaviors: Is Economic Abuse a Unique Form of Abuse?" (2013) 28:16 J Interpersonal Violence 3186; Voth Schrag, *supra* note 8.

²² Jozica Kutin et al, "Economic Abuse between Intimate Partners in Australia: Prevalence, Health Status, Disability and Financial Stress" (2017) 41:3 Austl & NZ J Public Health 269.

²³ Christopher Poole & John Rietschlin, "Intimate Partner Victimization among Adults Aged 60 and Older: An Analysis of the 1999 and 2004 General Social Survey" (2012) 24:2 J Elder Abuse & Neglect 120.

²⁴ Sarah Romans et al, "Who Is Most at Risk for Intimate Partner Violence? A Canadian Population-Based Study" (2007) 22:12 J Interpersonal Violence 1495.

Forces.²⁵ Only the fourth specifically surveyed economic abuse in the overall adult population, divided into its three subtypes. It found that 14.07 percent of respondents had experienced economic exploitation by an intimate partner. This was broken down into 9.70 percent of men and 18.18 percent of women.²⁶

Based on these studies, we can estimate that approximately 80 percent of victims of other forms of IPV have also experienced economic exploitation, and that approximately 14 percent of adults generally have experienced economic exploitation. The former estimate is likely dominated by control exploitation, where the abuser seeks to control the victim and trap the victim in the relationship. The latter estimate includes both control exploitation and revenge exploitation.

B. THE CONSEQUENCES OF ECONOMIC EXPLOITATION

Economic exploitation is not only prevalent, it also has significant consequences. When perpetrated in relationships with other forms of IPV, economic abuse restricts the victim's autonomy and financial stability, thus compounding economic insecurity. The victim is trapped in the abusive relationship.²⁷ Even apart from other forms of IPV, economic abuse can cause medical problems such as gastrointestinal issues, depression, psychological distress, and higher risk of suicide,²⁸ it can reduce employment and housing opportunities,²⁹ and it destroys credit ratings.³⁰

As explained in the introduction, the abuser exploits the victim's economic and financial resources, depleting or damaging them in the process. There are two broad forms of damage to those resources. Firstly, the wrongful behaviour by the abuser does not eliminate the victim's liability for the debt. Even if the liability is imposed by fraud, such as fraudulently obtaining and using a credit card in the victim's name, if the creditor acted in good faith, the victim remains liable for the debt.³¹ Secondly, the victim's credit rating is damaged, even though it is not a true reflection of the victim's credit worthiness.³² The victim's credit score is low because of the partner's wrongful acts, not because the victim is inattentive to financial obligations or assumes obligations the victim cannot satisfy. Because the credit information is technically correct in that the victim *is* legally responsible for a debt that has

²⁵ Mark A Zamorski & Miriam E Wiens-Kinkaid, "Cross-Sectional Prevalence Survey of Intimate Partner Violence Perpetration and Victimization in Canadian Military Personnel" (2013) 13:1 BMC Pub Health 1019.

²⁶ R McKay White & Devon Fjellner, "The Prevalence of Economic Abuse Among Intimate Partners in Alberta" (2022) January-March SAGE Open 1 at 7.

²⁷ Postmus et al, "Economic Abuse as an Invisible Form of Domestic Violence," *supra* note 4.

²⁸ Voth Schrag, *supra* note 8; Rachel J Voth Schrag et al, "Understanding Pathways within Intimate Partner Violence: Economic Abuse, Economic Hardship, and Mental Health" (2019) 28:2 J Aggression, Maltreatment & Trauma 222; Postmus et al, "Understanding Economic Abuse," *supra* note 20.

²⁹ Angela Littwin, "Coerced Debt: The Role of Consumer Credit in Domestic Violence" (2012) 100:4 Cal L Rev 951 [Littwin, "Coerced Debt"].

³⁰ *Ibid.*

³¹ See GHL Fridman, *The Law of Contracts in Canada*, 6th ed (Toronto: Carswell, 2011) at 305.

³² The role of credit reporting agencies is to collect and dispense information about consumers' historical use of credit, current obligations, and payment history (L Douglas Smith et al, "Accuracy of Information Maintained by U.S. Credit Bureaus: Frequency of Errors on Consumer Credit Scores" (2013) 47:3 J Consumer Affairs 588 at 589). Creditors increasingly rely on credit scores — a statistical representation of all this information — rather than review the information that is the source of such scores (Robert B Avery et al, "Credit Report Accuracy and Access to Credit" (2004) Fed Reserve Bull, Summer 297 at 297. As a result, creditors don't know if the credit score is a result of wrongful acts by others or if it accurately reflects the consumer's default risk.

not been paid, the damage to the credit rating cannot be rectified, even though it is an inaccurate representation of creditworthiness.³³ Consequently, the damage extends into the future. This increases the harm and makes it more difficult to quantify.

The potential consequences are put into sharp relief by consideration of Canadians' reliance on debt. Consumer borrowing in Canada has grown, with household debt as a percentage of net disposable income growing from 107.2 percent in 1995 to its all-time high of 186.9 percent in 2022.³⁴ Increased reliance on credit increases the risk from abusers using coerced debt to exercise control³⁵ or seek revenge upon termination of the relationship. Victims not only face threats to safety and difficulties in relocation, but also the consequences of destroyed credit.

The assessment of potential borrowers has changed from local lenders relying on their own judgment to reliance on credit registries and statistical tools.³⁶ The individual is removed from their social context, disaggregated into data, and compared to a large group of similarly disaggregated strangers. The result is reassembly into a credit score. That credit score is a statistical prediction of the individual's future behaviour based on how loosely comparable disassembled people have behaved.³⁷ The process excludes relevant information such as age and marital status (which are statistically shown to affect financial stability)³⁸ and reasons for any delinquency, such as wrongdoing by other parties.

Credit reports are available to potential lenders, employers, and others, making them a significant determinant of a person's socioeconomic status.³⁹ Thus, the consequences of a damaged credit rating can be extensive. The most obvious consequence is that credit is more difficult to obtain and more expensive.⁴⁰ Other damages are harder to quantify but more significant.⁴¹ Credit reports are used: for pricing automobile, homeowner, and other insurance; for employment decisions; for entering and renewing tenancy agreements; and when there is a direct business need in connection with a business or credit transaction.⁴² A damaged credit rating can therefore make it more difficult to obtain work, living accommodations, and insurance needed for transportation and management of risk. All

³³ A credit score's primary purpose is to represent the likelihood the borrower will default on a loan (Pablo Calafiore et al, "FAKO vs. FICO: Will a Free Credit Report Provide an Accurate Credit Score" (2014) 9:1 Intl J Bus & Economic Perspectives 36 at 37). A consumer's previous payment history is believed to be predictive of the consumer's future payment behaviour. The accuracy of this correlation is reduced when previous debt was obtained under coercion and the consumer had no control over its payment (Angela Littwin, "Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence" (2013) 161:2 U Pa L Rev 363 at 369 [Littwin, "Escaping Battered Credit"]). On the other hand, existing liabilities are important for creditors to assess competing claims on the consumer's income (Littwin, "Escaping Battered Credit," *ibid*). Thus, while historical defaults caused by wrongful behaviour by other parties are irrelevant to a consumer's creditworthiness, current liabilities are, even if coerced.

³⁴ OECD (2023), "Household debt," online: [perma.cc/T3RX-YFKF].

³⁵ Littwin, "Coerced Debt," *supra* note 29 at 953.

³⁶ Akos Rona-Tas & Alva Guseva, "Consumer Credit in Comparative Perspective" (2018) 44 Annual Rev Sociology 55 at 61.

³⁷ *Ibid* at 62.

³⁸ *Ibid* at 63.

³⁹ Deborah Thorne, "Personal Bankruptcy and the Credit Report: Conflicting Mechanisms of Social Mobility" (2007) 11:4 J Poverty 23 at 24–25.

⁴⁰ Smith et al, *supra* note 32 at 595–96.

⁴¹ Littwin, "Escaping Battered Credit," *supra* note 33 at 366–67.

⁴² See e.g. *Consumer Protection Act*, RSA 2000, c C-26.3, s 44(1). See also Smith et al, *supra* note 32 at 589; Christine Kim, "Credit Cards: Weapons for Domestic Violence" (2015) 22:2 Duke J Gender L & Policy 281 at 288.

aspects of life are affected. Requesting credit reporting agencies to make a note that specified debt defaults arose due to IPV is ineffective at ameliorating the damage, because such notes are not reflected in the credit score.⁴³

Abuse through economic exploitation is a prevalent problem with significant consequences for victims. The next section explores the adequacy of redress through the Canadian legal system.

III. THE ADEQUACY OF REDRESS FOR VICTIMS OF ECONOMIC EXPLOITATION

The immediate question is, what does it mean to have adequate redress for wrongdoing? Perfect redress would mean every victim of a civil wrong would receive perfect compensation. This is, of course, impossible. But there are certain standards against which we can measure how well the civil justice system provides redress for victims of specific types of wrongs:

1. What proportion of victims are able to access the civil justice system?
2. What range of instances of wrongful behaviour are addressed in the civil justice system?
3. How well do remedies compensate victims for, or eliminate, past and future harm?

For example, we can likely conclude that victims of negligent driving receive a high level of redress: a large proportion are able to access the civil justice system through insurance companies and through lawyers, a broad range of automobile accidents receive such attention, and there are sophisticated means of estimating, and compensating for, past and future harm. Our civil justice system provides more than adequate redress for victims of negligent driving.

This section demonstrates a lack of adequacy for victims of economic exploitation. Very few victims have access to the civil justice system; those that get access represent a small subset of exploitative behaviours,⁴⁴ and the law provides ineffective remedies. As a result, I conclude victims of economic exploitation have inadequate access to remedies from the civil justice system.

A. VICTIM ACCESS TO THE COURT SYSTEM

To assess how easily victims of economic exploitation can access the civil justice system, we first need an idea of how many victims there are. The previous section concluded that approximately 80 percent of IPV victims have experienced economic exploitation. Police reported data in Canada from 2019 indicates 107,810 people aged 15 and older reported

⁴³ Littwin, "Escaping Battered Credit," *supra* note 33 at 368; Postmus et al, "Understanding Economic Abuse," *supra* note 20.

⁴⁴ This article has already proposed that the law largely ignores the other forms of economic abuse: economic control and employment sabotage.

being victims of IPV.⁴⁵ We can therefore estimate that in 2019, more than 86,248 people aged 15 and older were victims of economic exploitation. In 2018, about 6.2 million Canadian women aged 15 and older reported having experienced IPV in their lifetime.⁴⁶ This translates to more than 4.95 million Canadian women having experienced economic exploitation at some point in their lives. Apart from IPV victims, if we accept that approximately 14 percent of adults in Alberta have been victims of economic exploitation, then there are over 320,000 such victims in the province.⁴⁷

Adequate access to justice should result in a significant number of these victims accessing the courts for redress. Yet, there is a paucity of reported judicial decisions addressing economic exploitation and its associated behaviours. The difficulty in finding any such decision and the content of those decisions indicate the reason is lack of access rather than resolution without judgment.

In searching “economic abuse” using the WestLaw Canada database, there are only five reported decisions in which the term is used as defined in the literature. None of those five decisions engage economic abuse or explore it in any depth, nor rely on it in deciding the dispute.⁴⁸ The term “economic exploitation,” as defined in the literature, is never used. The concept is referred to in two decisions from the late 1990s in the context of the objectives of family legislation — namely, to minimize economic inequality and exploitation in familial relationships⁴⁹ — but is not specifically addressed. The concept is also referred to in *Malik v. Malik*,⁵⁰ in which counsel submitted the International and Multidisciplinary Association of Family and Conciliation Courts Guidelines for Child Custody Evaluators as evidence to provide an overview of domestic violence. That document references “economically aggressive behaviours that involve the use of financial means to intentionally diminish or deprive another of economic security, stability, standing or self-sufficiency.”⁵¹ *Malik* is the only judicial decision that even obliquely recognizes economic exploitation and its associated behaviours as a form of IPV.

As the judiciary and the legal profession generally seems to be unfamiliar with the language of economic abuse and economic exploitation, it was necessary to use less specific search terms⁵² and to read through digests to find examples of judicial treatment of

⁴⁵ “Fact Sheet: Intimate Partner Violence” (7 February 2022), online: *Government of Canada* [perma.cc/JF2X-ZVF9] (if we accept that IPV is significantly underreported to police, these numbers understate the prevalence of abuse).

⁴⁶ *Ibid.*

⁴⁷ Based on there being 2,285,935 residents of Alberta between the ages of 25 and 64, inclusive, as reported in Statistics Canada, *Census Profile* (2016), online: [perma.cc/KT7H-B7JB] (see Alberta, Canada table).

⁴⁸ See *Lees v Lees*, [2000] OJ No 1046; *Nagy v Bright*, 2012 ONSC 986; *K (OE) v M (V)*, 2008 ABPC 271; *Lorimer v Lorimer*, [2009] OJ No 1460; *CAS v MB & KD*, 2017 ONSC 6504.

⁴⁹ *Taylor v Rossu*, 1998 ABCA 193; *M v H*, [1996] OJ No 365 (Ont SC).

⁵⁰ 2019 ONSC 5959 at para 25 [*Malik*].

⁵¹ *Ibid.*

⁵² Search terms included “high conflict,” “debt default,” and similar terms.

economically exploitative behaviours. I could find only seven.⁵³ In none of these decisions is there any recognition of the behaviours being a form of IPV.

Given the significance of the consequences of economic exploitation and the estimated prevalence of this form of abuse, we would expect to see far more engagement with the court than this handful of reported decisions, if victims had adequate access to the justice system.

B. THE RANGE OF ECONOMICALLY EXPLOITATIVE BEHAVIOURS ADDRESSED

Not only must the majority of victims of economic exploitation have access to the justice system, but the courts must address the full range of economically exploitative behaviours. Given that this wrong is seldomly acknowledged by judges and lawyers, it should be no surprise that the range of wrongs considered is severely limited. The reported decisions indicate victims of control exploitation are effectively barred from the civil justice system. Almost all of the few reported decisions address incidents of revenge exploitation, where the economic exploitation occurs during the course of pre-existing litigation due to the breakdown of the relationship.

In *Martin*, it was after separation that the defendant consistently made late payments on debt for which both parties were liable but incurred on assets the defendant exclusively possessed.⁵⁴ In *Sims*, the respondent agreed upon separation to assume sole responsibility for joint credit card debt in exchange for exclusive possession of their truck.⁵⁵ After increasing that credit card debt, the respondent defaulted on payments and the creditor sued the applicant for payment. During the course of divorce in *Lucik*, the defendant missed three mortgage payments for which the parties were jointly liable, that he had agreed to pay.⁵⁶ During the divorce process in *Venton*, the husband remained in the family home with responsibility for the mortgage payments, though both parties were legally liable to the creditor.⁵⁷ The husband defaulted on those payments and abandoned the home, triggering a power of sale. The state in which he left the home significantly diminished the parties' equity in the home and increased the legal cost of sale.

In *KAM*, after separation, the defendant deliberately permitted default judgments on his business debt, for which he was solely liable, to be registered as liens against the family home.⁵⁸ The practical effect was to make the plaintiff liable for his debt. His creditors had a claim on the plaintiff's assets. During divorce proceedings in *Al-Fatlawi*, the respondent took \$222,000 from a joint line of credit, without the applicant's knowledge, and sent it to

⁵³ *Martin v Dares*, [2000] NSJ No 453 (NS SC) [*Martin*]; *Sims v Sims*, 2004 ABQB 467 [*Sims*]; *Lucik v Lucik*, 2008 BCSC 531 [*Lucik*]; *Venton v Venton*, 2015 ONSC 4705 [*Venton*]; *KAM v BMM*, 2018 YKSC 14 [*KAM*]; *Al-Fatlawi v Al-Bajawi*, 2019 ONSC 7210 [*Al-Fatlawi*]; *Skinkle v Skinkle*, 2019 ONSC 2353 [*Skinkle*]; *KPB v KE*, 2019 BCCA 152 [*KPB*]. It is likely there are more reported incidents, but the failure to use standardized language in referring to these issues makes it difficult to find such decisions and develop a coherent jurisprudence for addressing them.

⁵⁴ *Martin*, *ibid*.

⁵⁵ *Sims*, *supra* note 53.

⁵⁶ *Lucik*, *supra* note 53.

⁵⁷ *Venton*, *supra* note 53.

⁵⁸ *KAM*, *supra* note 53.

his brother in Iraq.⁵⁹ The respondent then stopped making the interest payments on the debt. Similarly, in *KPB*, the husband withdrew \$193,792 from a joint line of credit after separation.⁶⁰ He used part of the funds as a deposit for purchase of a new home.

The above examples demonstrate revenge exploitation — the abuses occurred during or after separation or divorce proceedings. The first three are situations in which the abuser intentionally or negligently failed to pay debt the abuser was responsible to pay, but for which the victim was fully or jointly liable. The latter three are examples in which the abuser coercively obtained debt for which the victim was liable.

Skinkle is the only reported decision that addresses control exploitation — ongoing economic exploitation during the course of a relationship.⁶¹ The defendant forged the plaintiff's signature on credit cards, a mortgage, lines of credit, and insurance documents.

This imbalance in addressing revenge exploitation rather than control exploitation does not mean the former is more common. As already explained, the victims of control exploitation are many. Rather, it is more likely that such victims have significantly greater difficulty in accessing the civil justice system. Revenge exploitation occurs when the parties are already engaged in litigation. Control exploitation leaves the victims without the resources for legal help.

C. THE EFFECTIVENESS OF REMEDIES FOR ECONOMIC EXPLOITATION

The economic harm imposed on victims of economic exploitation has already been explained. An effective remedy must not only compensate for historical damage, such as liabilities incurred through coercion or fraud, but also either compensate for or eliminate the future harm caused by the damage to the victim's credit score. A review of the outcomes of the seven examples of judicial treatment of economic exploitation, given in Table 1, reveals that such redress is not forthcoming.

Table 1:
Remedies for Economic Exploitation

Case	Degree of Redress	Summary
<i>Lucik</i> ⁶²	No remedy	The defendant's failure to pay three mortgage payments damaged the plaintiff's credit score. There was potential to lose the family home. The plaintiff sought reapportionment of the equity in the home to 100 percent in her favour. Though she proved the defendant's actions meant she would need to make a higher down payment in the event she was to purchase a new home, had economic need, and had suffered a reduction in her earning capacity, no redress was given.

⁵⁹ *Al-Fatlawi*, *supra* note 53.

⁶⁰ *KPB*, *supra* note 53.

⁶¹ *Skinkle*, *supra* note 53.

⁶² *Lucik*, *supra* note 53.

Case	Degree of Redress	Summary
<i>Sims</i> ⁶³	Partial redress	The respondent incurred additional joint debt to his own benefit and defaulted. The creditor sued the applicant for payment. The applicant sought a court order for possession of a joint asset. The Court granted the application and ordered the applicant to sell the asset and to apply the proceeds to the joint debt. The applicant remained jointly liable for the respondent's debt and as the sole defendant in the creditor's lawsuit.
<i>Venton</i> ⁶⁴	Partial redress	The Court found the husband's default on the mortgage and abandonment of the home was an intentional or reckless depletion of the net family property in a manner that was unconscionable and ordered an unequal division of the property. The damage was not quantified, so it is unknown to what degree the victim was compensated.
<i>KAM</i> ⁶⁵	Partial redress	The defendant damaged the plaintiff's credit rating through default on debt payments and permitted registration of liens on the family home for debt for which the defendant was solely responsible. The Court granted the plaintiff an order for special costs but provided no compensation for her damaged credit rating or for the liens. ⁶⁶
<i>Al-Fatlawi</i> ⁶⁷	Partial redress	Because of the respondent's failure to make payments on the coerced debt, the creditor recalled the loan, cancelled the applicant's credit card, and threatened to take the family home. The applicant was then residing in the home with her children. To prevent loss of the home, the applicant began making the interest payments on the debt the respondent had incurred. By this point, her credit rating had already been damaged. Though the Court granted her claim for unjust enrichment and ordered the respondent to repay the loan and all unpaid interest, no remedy was given for the applicant's damaged credit rating, and she remained legally liable to the bank for the debt.
<i>KPB</i> ⁶⁸	Partial redress	The parties had a joint line of credit secured by a collateral mortgage against the jointly owned family home. After separation, the husband withdrew \$193,792 from the line of credit. \$120,437 was used toward purchase of a new home; the remaining \$72,778 was unaccounted for. The Court gave the wife an interest in the new residence proportionate to the amount of the husband's investment from the joint line of credit net of half of liability for the debt and ordered the husband to assume responsibility for all of the debt. However, the Court could not remove the wife's joint liability.
<i>Skinkle</i> ⁶⁹	Partial redress	The defendant forged the plaintiff's signature to obtain debt. The plaintiff sued for fraud. ⁷⁰ He obtained default judgment, in which most, but not all, of his claims were granted.

⁶³ *Sims*, *supra* note 53.

⁶⁴ *Venton*, *supra* note 53.

⁶⁵ *KAM*, *supra* note 53.

⁶⁶ Curiously, the plaintiff did not seek such compensation. She sought only special costs. Her legal counsel ought to have recognized the full damage and sought full compensation.

⁶⁷ *Al-Fatlawi*, *supra* note 53.

⁶⁸ *KPB*, *supra* note 53.

⁶⁹ *Skinkle*, *supra* note 53.

⁷⁰ As in *KAM*, *supra* note 53, the plaintiff did not seek compensation for all damage suffered. He claimed only those debts that had either been paid by him to settle third party claims or claims for the lost value in life insurance policies, and general damages in defamation for the effect on his credit rating. This suggests his legal counsel did not properly advise him on what he could seek.

Case	Degree of Redress	Summary
<i>Martin</i> ⁷¹	Full redress	The plaintiff sought possession of the assets on which the defendant had defaulted, claiming constructive trust due to unjust enrichment. The Court gave her possession and responsibility to pay for the assets. The plaintiff acted quickly enough such that there was no damage to her credit rating or infliction of ongoing harm. As a result, possession was sufficient to remedy the situation.

In one of these cases, the victim received no redress for the harm suffered from economic exploitation. In five of them, the victims received partial or complete compensation for past harm but remained liable for coerced debt and received no compensation for or prevention of future harm due to that liability or damaged credit ratings. Only in *Martin* was the plaintiff fully compensated, but only because the plaintiff was able to act before her credit score was damaged.⁷²

I conclude that victims of economic exploitation are receiving inadequate access to justice. The meager number of reported judicial decisions addressing economically exploitative behaviour compared to the estimated incidence of such behaviour indicate most victims are unable to access the civil justice system. Additionally, the fact that the reported decisions almost exclusively address revenge exploitation indicates that access may be especially difficult for victims of control exploitation. Finally, these victims are unable to receive sufficient redress for future harm that will be suffered due to damaged credit ratings and ongoing liabilities for debt.

IV. OBSTACLES TO JUSTICE FOR VICTIMS OF ECONOMIC EXPLOITATION

The findings demonstrated in this article thus far raise the question of why victims of economic exploitation are unable to obtain redress for abuse suffered. There are three primary obstacles:

1. Systemic barriers in the legal system for IPV victims generally.
2. The legal profession's lack of understanding and knowledge about economic exploitation.
3. Fully effective remedies are not presently available.

This section reviews each of these obstacles.

A. SYSTEMIC BARRIERS

The number of reported decisions addressing economic exploitation is marginal compared to the estimated number of victims. The lack of understanding demonstrated in those

⁷¹ *Martin*, *supra* note 53.

⁷² *Ibid.*

decisions suggests this represents an inability to access the justice system rather than that the victims are obtaining redress through other means. This conclusion is also supported by the research summarized in the introduction of this article and expanded upon here.

There are multiple sources of obstacles IPV victims must overcome — particularly for women. Many are inherent in the legal system itself. Firstly, overlapping laws and legal regimes create gaps, inconsistencies, and conflicts that confuse rights and responsibilities.⁷³ They result in multiple and repetitive court attendances, conflicting court orders, contradictory system expectations, and compromised safety.⁷⁴ They also exacerbate biases in the legal system that an abuser can exploit. IPV victims may face legal consequences from reporting abuse to authorities, including child protection and immigration consequences.⁷⁵ Many victims complain that legal system actors minimize their experiences and dismiss their accounts as irrelevant, unbelievable, or as vindictive ploys.⁷⁶

Abusers also misuse the legal system to their advantage.⁷⁷ They increase coercive control of their victims by threatening criminal charges, deportation, and loss of access to their children.⁷⁸ Additional tactics include self-representing by choice in order to cross-examine their victim, bringing multiple and frequent applications, and dragging out proceedings in order to deplete the victim's financial resources.⁷⁹

There is no reason to suppose that these systemic barriers for IPV victims generally do not also affect victims of economic exploitation, particularly when that abuse is used to trap the victim in a relationship typified by other forms of IPV.

B. UNDERSTANDING BY THE LEGAL PROFESSION

The six reported decisions regarding economic exploitation reviewed above indicate the legal community, including the judiciary, is insufficiently aware of economic exploitation and inadequately understands its consequences — a failing this article seeks to address. This ignorance is demonstrated by the failure to link the wrongful behaviours to economic abuse and IPV, by attempting ineffective causes of action or seeking ineffective remedies, and by failure to raise the full spectrum of damages.

The above discussion already explains the difficulty in finding any meaningful discussion by judicial decisions addressing economic exploitation or economic abuse in any form. Nowhere in the six reported decisions do the courts recognize any of the behaviours as a form of economic abuse and IPV, and legal counsel does not establish an adequate legal or factual context. These failures are compounded by the cause of action used or remedy sought. In *Lucik*, the plaintiff sought reapportionment of the equity in the family home — a

⁷³ Koshan, *supra* note 16 at 522, 545; Mosher, *supra* note 11 at 152.

⁷⁴ Mosher, *ibid* at 152.

⁷⁵ Koshan, *supra* note 16 at 546.

⁷⁶ Mosher, *supra* note 11 at 156.

⁷⁷ Kayla Gurski & Tiffany Butler, “Shifting Toward a Trauma-Informed, Holistic Legal Service Model for Survivors of Violence: The Calgary Legal Guidance Family Law Program” in Tod Augusta-Scott et al, eds, *Innovations in Interventions to Address Intimate Partner Violence: Research and Practice* (New York: Routledge, 2017) 139 at 140–41.

⁷⁸ Mosher, *supra* note 11 at 152.

⁷⁹ Miller & Smolter, *supra* note 12 at 640–41.

very difficult remedy to secure.⁸⁰ The victim in *Venton* succeeded in obtaining an unequal division of net family property, but there is no basis on which to judge the adequacy of this result in addressing the harm caused.⁸¹ In *KAM*, the plaintiff sought only an order for special costs.⁸² The remedy of special costs compensates for legal expenses but does not address the damage inflicted.

Not only does legal counsel sometimes fail to claim compensation for damage, but it appears such damage is not always raised. None of the reported decisions address the potential future consequences of a damaged credit rating beyond a passing reference to a higher cost of credit. There is no consideration of the potential impact on employment, insurance rates, housing, and utilities.

C. LACK OF EFFECTIVE REMEDIES

The fact that no effective remedy presently exists may be part of the reason legal counsel does not address the full spectrum of damage. An effective remedy must either stop the ongoing harm caused by the abuser's actions or else quantify and compensate for that harm.

It has already been explained that, provided the creditor had no reason to suspect coercion or fraud, the victim remains liable for the debt. At present, courts cannot forbid creditors, such as banks, from collecting from the victim. Thus, in *Sims* and *KAM*, the victim was left jointly liable for the abuser's debt.⁸³ The future harm caused by a damaged credit rating is also difficult to address. The ongoing impact of the damaged credit rating on employment, tenancies, and other factors in addition to credit and interest payments is significant. At present, there is no methodology for estimating that harm. Therefore, it is likely more effective to minimize that harm, which will require changing the victim's credit information.

Credit ratings are intended to reflect the consumer's credit worthiness (meaning, the risk to a creditor loaning money to a consumer that the consumer's obligations will be unfulfilled).⁸⁴ Credit reports and scores enable a potential creditor to assess a consumer's payment history and evaluate the probability of repayment. The potential creditor can also identify competing claims on the consumer's income and the creditor's ability to collect in event of default. Credit information also provides information relevant for predicting job performance and payment of rent and utility bills.⁸⁵ To the extent that economic exploitation distorts a victim's credit rating, the damage continues into the future. Current provincial legislation on consumer credit reporting is not designed to provide any relief when credit has been damaged through the wrongful acts of others. It only provides rectification of incorrect information.⁸⁶ The victim's liability for the debt and default status is considered correct, even though the fault is with the abuser. As a result, the legislation does not contemplate changing it. At present, courts cannot change a victim's credit information.

⁸⁰ *Lucik*, *supra* note 53 (the plaintiff failed).

⁸¹ *Venton*, *supra* note 53.

⁸² *KAM*, *supra* note 53.

⁸³ *Sims*, *supra* note 53; *KAM*, *ibid*.

⁸⁴ Smith et al, *supra* note 32; Avery et al, *supra* note 32.

⁸⁵ Littwin, "Escaping Battered Credit," *supra* note 33 at 364.

⁸⁶ See e.g. *Consumer Reporting Act*, RSO 1990, c.C.33 ss 13–14; *Credit and Personal Reports Regulation*, Alta Reg 193/1999 s 3.3.

V. MOVING FORWARD

Addressing these obstacles to effective redress for victims of economic exploitation requires a three-pronged approach. We must educate the legal profession and the judiciary, use best practices when representing victims of economic exploitation (and IPV generally), and we need legislative reform to enable effective remedies.

A recent review of domestic violence law in Alberta best explains the importance for the legal profession to understand the nature, prevalence, and consequences of economic exploitation and all forms of IPV. As Jennifer Koshan proposed, “[I]aw has an important role to play in prevention efforts through the ways it defines domestic violence, which may have educative and normative influences on the public.”⁸⁷ Victims of any form of IPV, including economic exploitation, are often traumatized and left vulnerable to ongoing abuse. Their situation poses significant barriers to accessing any sort of justice, particularly when the abuser misuses the legal system.⁸⁸ Taking too narrow a view of IPV excludes victims, leaving them and their children without protective remedies.⁸⁹ Improving the legal profession’s understanding and identification of economic exploitation will help address these issues.

Lawyers and judges need “the interest in, aptitude for, and the professional experience and expertise required to deal with the complexities of, and multifaceted nature of, IPV cases.”⁹⁰ Victims deserve skillful and knowledgeable legal representation who understand the dynamics of abuse and the multi-layered and interlocking systems that shape victims’ lives.⁹¹ Courts and lawyers need to screen for IPV,⁹² including economic exploitation and other forms of economic abuse.

When economic exploitation is encountered, lawyers can employ best practices to maximize redress for the victim. Presently, the most effective causes of action are in unjust enrichment and fraud. Every time unjust enrichment was argued in the reported decisions, the victim received at least partial redress. With economic exploitation: the abuser is enriched by making use of the victim’s economic resources; the victim has been deprived by damage to their credit rating or liability for a financial obligation to which the victim did not freely consent and received no benefit; and there is no juristic reason for the enrichment and deprivation.⁹³

Unjust enrichment has the added advantage of being an equitable claim, and thus gives the court flexibility to provide a remedy that is fair and just. In *Martin*, the Court gave the

⁸⁷ Koshan, *supra* note 16 at 522–23.

⁸⁸ *Ibid* at 523.

⁸⁹ *Ibid* at 546.

⁹⁰ Hon Donna J Martinson, “Multiple Court Proceedings and Intimate Partner Violence: A Dangerous Disconnect” (Keynote address delivered at the Canadian Observatory on the Justice System’s Responses to Intimate Partner Violence National Conference, University of New Brunswick, Fredericton, 21 October 2014) at 3, online: [perma.cc/Q2DU-C2NX].

⁹¹ Mosher, *supra* note 11 at 177–78.

⁹² Koshan, *supra* note 16 at 547.

⁹³ *Garland v Consumers’ Gas Co*, 2004 SCC 25 at 42–47 (examples of juristic reasons include the existence of a contract, disposition of law, and donative intent).

plaintiff possession of assets.⁹⁴ In *Al-Fatlawi*, the Court ordered the respondent to repay the loan and unpaid interest.⁹⁵ These remedies represent a step in the right direction, but counsel ought to seek more to remedy the harm caused to the victim. Many victims are also deprived of their good credit rating and all the benefits that confers (as discussed above). As constructive trust, restitution, and account are inappropriate or inadequate, compensation is available as another equitable remedy. It attempts to restore to the plaintiff what has been lost due to the wrongful conduct.⁹⁶ Counsel must prove those losses and help courts to understand the consequences of economic exploitation as a form of IPV.

Fraud is also an effective cause of action when, as in *Skinkle*, the abuser fraudulently imposes financial liability on the victim.⁹⁷ Damages are similar to the equitable remedy of compensation, in that it is intended to restore the plaintiff to the position they would be in, but for the fraud. The key points in both causes of action are that legal counsel must properly characterize the wrongful conduct as economic abuse, a form of IPV, and legal counsel must prove all sources of harm — including financial loss due to imposed debt, damaged credit rating and the future harm caused by it, and any psychological or physical harm.

Given the difficulties in quantifying that future harm, we also need legislative reform. To the extent that the damaged credit score inaccurately reflects a victim's actual credit worthiness,⁹⁸ legislation should permit adjustment. This should clearly be allowed in situations of economic exploitation, where the debt or failure to pay was incurred through coercion or fraud. Angela Littwin's proposal provides a compelling starting point for discussion of what the reforms could be:

1. Judges over family disputes would be empowered to certify that a debt was obtained through coercion. The recipient of such a certification would submit it to credit reporting agencies.
2. If the coerced debt is no longer outstanding, any information regarding that debt is removed from the victim's credit score and credit report. This will prevent the negative history from portraying the victim as a worse credit risk than is true.
3. The existence of outstanding debt would not be blocked for potential creditors. This is because existing liabilities are important for decisions about whether or not to extend credit, regardless of whether those liabilities were incurred through coercion or not.
4. The existence of outstanding coerced debt would be blocked for other users of credit reports, such as employers and potential landlords. This is because their interest in such information is of less weight than the objective of enabling a victim of IPV to attain financial stability.⁹⁹

⁹⁴ *Martin*, *supra* note 53.

⁹⁵ *Al-Fatlawi*, *supra* note 53.

⁹⁶ *Canson Enterprises Ltd v Boughton & Co*, [1991] 3 SCR 534 at 84.

⁹⁷ *Skinkle*, *supra* note 53.

⁹⁸ The extent of this impact requires study. I cannot find any current research assessing whether being a victim of financial abuse and similar activities is a predictor of future ability to pay liabilities.

⁹⁹ Littwin, "Escaping Battered Credit," *supra* note 33 at 369–71.

Using family courts to address these issues is advantageous for at least three reasons.¹⁰⁰ The court's evidentiary processes avoid many of the informational issues inherent to the internal dispute resolution process of credit reporting agencies. Furthermore, family courts have experience and expertise in analyzing and making decisions about family finances. Finally, these courts are already deciding related issues.

The combination of education, best practices, and legislative reform — in combination with support from social agencies — can improve redress for those harmed by economic exploitation.

VI. CONCLUSION

Though economic abuse, including economic exploitation, is receiving greater academic attention and research, lawyers, judges, and legislators have yet to recognize the significance of the issue. This has arisen from failure to understand what behaviours are economically exploitative and to recognize such exploitation as a form of IPV with significant, long-term harm. The consequence is that victims cannot sufficiently access justice, and remedies are ineffective.

This article has sought to address these issues by explaining economic exploitation, the obstacles to redress for victims of that abuse, and practices and reforms that will improve outcomes. As a legal profession, we need to become educated on economic abuse, particularly in regard to how it is perpetrated, how to identify it as we work with clients, and the nature of its consequences. This will, in turn, lead to better outcomes for victims. Judges need to be more willing to provide effective compensation for the damage caused by economic exploitation as counsel gets better at proving the harm.

Providing and attending seminars on economic abuse, how to recognize it, and its consequences, is a good starting point. Lawyers and judges can also reach out to social programs for victims of IPV for more information. Discourse on these issues needs to begin among legislators, so that they may look at legal reform and provide more effective remedies for victims. These initial steps will help ameliorate the impact to victims.

¹⁰⁰ *Ibid* at 372–73.