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Book Review

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### **Abstract**

The defence of duress in Canadian criminal law has been described by scholars and judges as a “complicated mess,” “[o]ften confusing and potentially gendered,” and “irrational, anomalous, perverse, illogical and fundamentally wrong.” The most recent Supreme Court of Canada case to attempt to bring clarity to the embattled duress defence, R v Ryan (“Ryan”), is the focus of Nadia Verrelli and Lori Chambers’ No Legal Way Out: R v Ryan, Domestic Abuse, and the Defence of Duress (“No Legal Way Out”).

## Book Review

## ***No Legal Way Out: R v Ryan, Domestic Abuse, and the Defence of Duress* by Nadia Verrelli and Lori Chambers<sup>1</sup>**

ABIGAIL MARCH<sup>2</sup>

THE DEFENCE OF DURESS IN CANADIAN CRIMINAL LAW has been described by scholars and judges as a “complicated mess,”<sup>3</sup> “[o]ften confusing and potentially gendered,”<sup>4</sup> and “irrational, anomalous, perverse, illogical and fundamentally wrong.”<sup>5</sup> The most recent Supreme Court of Canada case to attempt to bring clarity to the embattled duress defence, *R v Ryan* (“*Ryan*”),<sup>6</sup> is the focus of Nadia Verrelli and Lori Chambers’ *No Legal Way Out: R v Ryan, Domestic Abuse, and the Defence of Duress* (“*No Legal Way Out*”).

Eschewing a purely legal analysis, Verrelli and Chambers cut through the dense “mess” of duress doctrine to focus on Nicole Doucet’s story and place this case in the context of gendered violence in Canada. Nicole (Ryan) Doucet<sup>7</sup>

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1. (UBC Press, 2021).
  2. Juris Doctor 2023, Osgoode Hall Law School.
  3. Kent Roach, “The Duress Mess” (2013) 60 Crim LQ 159 at 159.
  4. Frances E Chapman & Georgette M Lemieux, “The Troubled History of the Defence of Duress and Excluded Offences: Could the Reasoned Use of Mitigation on Sentencing Prevent Duress from (Further) Becoming Archaic, Gendered, and Completely Inaccessible?” (2021) 44 Man LJ 33 at 35.
  5. *R v Ruzic*, 1998 CarswellOnt 3368 (WL Can) at para 50 (CA).
  6. 2013 SCC 3 [*Ryan* SCC].
  7. Although Nicole Doucet’s legal surname was still Ryan when she was charged, the authors refer to her as Doucet, in line with her wishes. This review does the same. See Verrelli & Chambers, *supra* note 1 at 8.

experienced control and abuse at the hands of her husband, Michael Ryan, who, amidst a contentious separation, threatened to kill Doucet and their daughter.<sup>8</sup> When Doucet's calls to the police did not yield protection, Doucet attempted to hire a hit man to kill Ryan and was charged with counselling an offence that was not committed.<sup>9</sup> Doucet claimed the common law defence of duress at trial and at the Court of Appeal for Nova Scotia on the basis of her reasonable fear that Ryan would carry out his threats and her inability to perceive a legal alternative to escape them.<sup>10</sup> The Supreme Court of Canada, however, reversed the acquittal and held that the duress defence was not available to Doucet, though it also imposed a stay of proceedings against her.<sup>11</sup> As an "unapologetically feminist"<sup>12</sup> narrative that never loses focus on Doucet's perspective, *No Legal Way Out* uses her story to argue that Canadian criminal law remains poorly equipped to respond to the circumstances of women, particularly victims of intimate partner abuse.

*No Legal Way Out* is part of UBC Press's "Landmark Cases in Canadian Law," a series of books that analyze high-profile and influential cases decided by "Canada's highest court": the Judicial Committee of the Privy Council and the Supreme Court of Canada.<sup>13</sup> The *Ryan* case, with its unusual facts and considerable mainstream media attention—initially supportive of Doucet and, later, more hostile—fits well within the series' mandate to highlight cases with significant social and political implications.

The authors' backgrounds are in the social sciences: Verrelli is a professor of political science and fellow at Queen's University's Institute of Intergovernmental Relations,<sup>14</sup> while Chambers is a professor of gender and women's studies at Lakehead University.<sup>15</sup> Their experience with applying an interdisciplinary lens to the law is evident throughout the book. Further, this is not the authors' first collaboration on the topic of intimate partner violence and the law. Verrelli and Chambers have previously critiqued the Court's decision in *Ryan* and the

8. *Ibid* at 32-36.

9. *Ibid* at 27, 36, 86-93; *Criminal Code*, RSC 1985, c C-46, s 464(a).

10. See *R v Ryan*, 2010 NSSC 114 [*Ryan SC*]; *R v Ryan*, 2011 NSCA 30 [*Ryan CA*].

11. See *Ryan SCC*, *supra* note 6.

12. Verrelli & Chambers, *supra* note 1 at 8.

13. See UBC Press, "Landmark Cases in Canadian Law," online: *UBC Press* <[www.ubcpres.ca/landmark-cases-in-canadian-law](http://www.ubcpres.ca/landmark-cases-in-canadian-law)> [perma.cc/2UWH-8YBL].

14. See Laurentian University, "Nadia Verrelli," online: *Laurentian University* <[laurentian.ca/faculty/nverrelli](http://laurentian.ca/faculty/nverrelli)> [perma.cc/JN69-6C6T]; Queen's University, "Nadia Verrelli," online: *Institute of Intergovernmental Relations* <[www.queensu.ca/iigr/people-search/verrelli-nadia](http://www.queensu.ca/iigr/people-search/verrelli-nadia)> [perma.cc/TJ4Z-KDQC].

15. See Lakehead University, "Dr. Lori Chambers," online: *Lakehead University* <[www.lakeheadu.ca/users/C/lchambe2](http://www.lakeheadu.ca/users/C/lchambe2)> [perma.cc/V89V-U2JP].

investigation into the actions of the Royal Canadian Mounted Police (RCMP) in Doucet's case, and this prior research informs the later chapters of *No Legal Way Out*.<sup>16</sup>

Verrelli and Chambers' overarching argument is that a failure to understand and appreciate Doucet's circumstances as a woman victimized by prolonged coercive control led Canada's highest court, as well as the RCMP and the media, to fail women trapped in violent relationships. The pervasiveness of gender inequality and the ways that the criminal law fails to respond to or alleviate it are explored through the authors' detailed analysis of the *Ryan* case.

The book's interdisciplinary focus is evident in the first chapter, which sets out the extent of domestic violence against women as a gendered phenomenon, the psychological concepts of battered woman syndrome and coercive control, and the heightened risk of femicide when women attempt to leave abusive men.<sup>17</sup> This brief explanation of the insidious nature of domestic abuse provides essential context for the following chapters, which follow the story of the *Ryan* case from the beginning of the marriage to the Court's ruling, then explore in turn the role of the RCMP and the media in this case. The book's conclusion returns to focus on intimate partner violence as a social problem rooted in gender inequality.<sup>18</sup> The final pages also provide a timely, though somewhat cursory, discussion of potential legislative responses to coercive control and a note on how the COVID-19 pandemic may exacerbate the risks faced by women like Doucet.<sup>19</sup>

In line with this explicitly feminist orientation, the authors adopt the methodologies of feminist practical reasoning and narrative method.<sup>20</sup> Feminist practical reasoning and storytelling are well suited to the *Ryan* case, and these methodologies are deployed to good effect by Verrelli and Chambers. According to Katharine T. Bartlett, who first articulated this method, feminist practical reasoning combines practical and contextual decision making, as compared to formal and rule-bound legal reasoning, with an awareness of women's experiences and gender inequalities.<sup>21</sup> Verrelli and Chambers add that "feminist practical

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16. See Jason MacLean, Nadia Verrelli & Lori Chambers, "Battered Women under Duress: The Supreme Court of Canada's Abandonment of Context and Purpose in *R. v Ryan*" (2017) 29 CJWL 60; Lori Chambers & Nadia Verrelli, "A Missed Opportunity: The Public Investigation into the Conduct of the RCMP in Matters Involving Nicole (Ryan) Doucet" (2017) 32 CJSLS 117.

17. Verrelli & Chambers, *supra* note 1 at 11-22.

18. *Ibid* at 118-27.

19. *Ibid* at 118-19, 122, 125-27.

20. *Ibid* at 8.

21. "Feminist Legal Methods" (1990) 103 Harv L Rev 829 at 849-63.

reasoning draws on the values and experiences of those who are traditionally outsiders to the law, such as women who experience domestic abuse.”<sup>22</sup> Furthermore, the authors use the “narrative method,” presenting the majority of their analysis of the *Ryan* case in the form of a story, told in chronological order with ample detail.<sup>23</sup>

Indeed, this book’s greatest strength is its use of Doucet’s narrative to illustrate a broader argument about the failure of the legal system to adequately respond to intimate partner violence. This storytelling method “seeks to reveal the falsity of the law’s claims to neutrality and to oppose its gendered power dynamics.”<sup>24</sup> Verrelli and Chambers also explicitly acknowledge that a goal of their project is to counter negative media portrayals of Doucet as a vengeful, scorned woman, which they argue were inaccurate, incomplete, and manipulated by Ryan in an effort to control the narrative—a continuation of his coercive control of Doucet.<sup>25</sup> By claiming their viewpoint as gender-based and identified with Doucet, Verrelli and Chambers situate their work within a tradition of feminist legal storytelling, which rejects law’s purported neutrality and advances explicitly political goals.<sup>26</sup>

Verrelli and Chambers’ storytelling is informed by primary sources, including the original trial transcript and records of Ryan and Doucet’s divorce proceeding, which required considerable time and effort to obtain.<sup>27</sup> Trial transcripts, as in Elizabeth A. Sheehy’s work on trials wherein battered women killed their abusers, contain context and detail that is often missing from published judgments, particularly appellate judgments.<sup>28</sup> Through the authors’ synthesis of the court record, the reader can understand the ways in which Doucet’s perspective as a woman who had suffered prolonged psychological abuse was vastly different from that of the proverbial “reasonable man” and should therefore have been judged differently.<sup>29</sup>

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22. *Supra* note 1 at 8.

23. *Ibid.*

24. *Ibid.* On the potential for legal storytelling to advance social justice goals, see also Richard Delgado, “Storytelling for Oppositionists and Others: A Plea for Narrative” (1989) 87 Mich L Rev 2411; Jane C Murphy, “Lawyering for Social Change: The Power of the Narrative in Domestic Violence Law Reform” (1993) 21 Hofstra L Rev 1243.

25. See Verrelli & Chambers, *supra* note 1 at 5, 102-109.

26. On narratives and feminist storytelling’s rejection of neutrality, see Kathryn Abrams, “Hearing the Call of Stories” (1991) 79 Cal L Rev 971 at 975-76, 996-1000.

27. See Verrelli & Chambers, *supra* note 1 at 6-7.

28. *Defending Battered Women on Trial: Lessons from the Transcripts* (UBC Press, 2014).

29. Verrelli & Chambers, *supra* note 1 at 8, 58-59.

To this end, Verrelli and Chambers employ techniques like character, sensory language, dialogue, and conflict—features of an effective legal narrative.<sup>30</sup> Verrelli and Chambers describe Doucet as their “protagonist,”<sup>31</sup> and the reader is given insight into her psychological state, including her fear of Ryan, her alarming thinness due to stress, and her description of feeling “hollow...lost...you don’t even know if you want to live.”<sup>32</sup> Vivid descriptions of Ryan’s threats to shoot and bury Doucet and their daughter, or to burn their house down, allow the reader to empathize with Doucet’s fear.<sup>33</sup> Voice is given to Ryan’s threats as well: “You will be nothing when I am done with you....Don’t test me. I will destroy you before I give you a divorce.”<sup>34</sup> Conflict and tension build in Doucet’s story as, after they separate, Ryan stalks Doucet at the school where she works—the only place where she felt safe.<sup>35</sup> As a result, the reader is provided with a deep understanding of Doucet’s experiences, including Ryan’s escalating psychological, financial, sexual, and physical abuse; Doucet’s frustrating efforts to seek protection from the RCMP and Victim’s Services, which largely dismissed her complaints as “civil”; and her experience of cross-examination at trial.<sup>36</sup> Telling the story from Doucet’s perspective achieves Verrelli and Chambers’ goal of “humaniz[ing] the law.”<sup>37</sup>

However, as Richard Delgado notes, “[t]he dominant group creates its own stories, as well,”<sup>38</sup> and in addition to Doucet’s narrative, Verrelli and Chambers discuss the investigation into the RCMP’s response to Doucet and media coverage of the case. In the aftermath of the Court’s decision, they argue, dominant stories about intimate partner violence—myths that women lie about or exaggerate abuse, or that men and women are equally violent—re-asserted themselves.<sup>39</sup> Verrelli and Chambers’ narration of Doucet’s perceptions and actions as an abused woman, read against the official responses of institutions like the RCMP, which absolved itself of wrongdoing because it followed established procedures in Doucet’s case, reveals the difficulty faced by women like Doucet.<sup>40</sup> The RCMP and the media’s embrace of these dominant narratives, they assert,

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30. See Lindsey Martin-Bowen, “Words from a Teller of Tales: Can Storytelling Play an Effective Role in Feminist Jurisprudence” (1997) 66 UKMC L Rev 95 at 126-34.

31. *Supra* note 1 at 8.

32. *Ibid* at 34-35, 39.

33. *Ibid* at 35-36.

34. *Ibid* at 35.

35. *Ibid* at 36-37.

36. *Ibid* at 26-52, 86-92.

37. *Ibid* at 8.

38. *Supra* note 24 at 2412.

39. Verrelli & Chambers, *supra* note 1 at 96-97.

40. *Ibid* at 81-94.

supports their argument that the Court, the RCMP, and the media “fail[ed] to understand coercive control and the real risk of lethality faced by women in coercive relationships.”<sup>41</sup>

Although the third chapter provides a comprehensive overview of the reasoning of each level of court on the issue of duress, relatively little of the book is spent on an analysis of the defence of duress itself. Readers seeking a complete understanding of the duress defence as it exists today, or a detailed critique of the doctrinal moves made by the Court, will not find that analysis here.<sup>42</sup> In light of the extensive existing scholarly criticism of the defence and the Court’s efforts to clarify the complex doctrine in *Ryan*, Verrelli and Chambers’ relatively brief discussion of the doctrinal effects of *Ryan* is an omission that may disappoint some criminal law scholars. But providing that analysis is not the purpose of *No Legal Way Out*.

The book’s legal analysis is most effective when it places *Ryan* in dialogue with *R v Lavallee* (“*Lavallee*”), a decision from thirty-three years earlier.<sup>43</sup> *Lavallee*, according to Verrelli and Chambers, was a judgment that, sensitive to the context of battered woman syndrome and domestic abuse, expanded the law of self-defence to accommodate the circumstances of an abused woman.<sup>44</sup> Here, the authors again gesture to feminist practical reasoning, arguing that this model of flexible and contextual decision making, wherein women’s lived experiences are taken into account, was evident in Justice Wilson’s decision in *Lavallee* but absent in *Ryan*.<sup>45</sup> For instance, both the trial and appellate reasons described Ryan’s campaign of coercive control over Doucet in detail and centred these facts in their analysis.<sup>46</sup> Verrelli and Chambers note with disappointment that although the Supreme Court of Canada acknowledged the abuse that Doucet experienced as a “reign of terror,”<sup>47</sup> the Court provided no details about this abuse.<sup>48</sup>

Further, the authors advance a strong normative argument when they criticize the Court’s holding that duress applies only when a person commits an offence

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41. *Ibid* at 94.

42. For doctrinal critiques of the duress defence post-*Ryan*, see Roach, *supra* note 3; Steve Coughlan, “The Rise and Fall of Duress: How Duress Changed Necessity before Being Excluded by Self-Defence” (2013) 39 *Queen’s LJ* 83; Terry Skolnik, “Three Problems with Duress and Moral Involuntariness” (2016) 63 *Crim LQ* 124.

43. [1990] 1 *SCR* 852.

44. Verrelli & Chambers, *supra* note 1 at 23-25.

45. *Ibid* at 77-78.

46. See *Ryan SC*, *supra* note 10 at paras 15-56; *Ryan CA*, *supra* note 10 at paras 4-53.

47. *Ryan SCC*, *supra* note 6 at para 35.

48. *Supra* note 1 at 74.



due to “a threat made *for the purpose of compelling* [the accused] to commit it.”<sup>49</sup> They reason that, just as *Lavallee* expanded the legal conception of the “reasonable person” to include an abused woman’s reasonable belief that she was in imminent peril, the Court could have applied a gender-based lens to the principle of “moral involuntariness” and concluded that, from Doucet’s perspective, her actions were not truly voluntary and should be excused under the law.<sup>50</sup> This contrast between *Lavallee* and *Ryan*, given the narrative that Verrelli and Chambers have detailed in the preceding chapter, is convincing. Their analysis suggests that, in its efforts to maintain conceptual distinctions between defences, such as the principle that self-defence (a justification-based defence) must be more readily available than duress (an excuse-based defence), the Court paid too little attention to gender and denied women in Doucet’s circumstances any defence at all.<sup>51</sup>

This relatively quick read (127 pages, excluding notes and index) is an important contribution to the literature on criminal law and intimate partner violence in Canada. Students and researchers who study gender and the law will find this book an engaging example of feminist legal analysis, applied to a significant case in Canadian criminal law. Furthermore, this book is very accessible and requires no legal training to understand; any reader seeking to learn more about the intersection of criminal law and gendered violence will find a compelling narrative and a clear example of how, years after *Lavallee*, the “messy” law of defences may continue to allow “no legal way out” for women like Doucet.

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49. *Ryan* SCC, *supra* note 6 at para 2 [emphasis in original]; Verrelli & Chambers, *supra* note 1 at 75.

50. Verrelli & Chambers, *supra* note 1 at 23-25, 77-78.

51. *Ibid* at 72-73, 76.

