

Constructing Nicole: Gender, Discourse and Victimization/Criminalization in *R v. Ryan*.

By

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Abstract

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This thesis investigates the case *R v. Ryan* at the Supreme Court of Nova Scotia level. It is a feminist, post-structural critical discourse analysis of the gender scripts in *R v Ryan*. In particular, it examines the ways in which Nicole Doucet is framed through discourses of emphasized femininity, “Battered Woman’s Syndrome” psychological discourse and legal credibility, and how these discourses construct her through a dichotomous Victim/Criminal binary. The thesis will argue that this analysis of gendered discourses, as well as Doucet’s resistance to these narratives, add to the research on the victimization and criminalization of women charged with self-defensive violence by providing an example of the way the victimization-criminalization continuum is a more accurate way of analyzing women’s self-defensive violence.

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## **CHAPTER 1: INTRODUCTION**

My grandmother was a battered woman. She lived through years of severe physical, emotional and financial abuse at the hands of her husband; her legacy is that in a time when she faced so many structural obstacles, she was able to pick up and leave that relationship with her five young children. My grandmother was strong and lucky, but not every woman has the resolve or the resources to do what she did (Statistics Canada 2009: 12). This thesis is about one battered woman's story. It is a case study of her specific battle, but is reflective of a much larger problem that 15-71% of women face worldwide, depending on the country in which they live (World Health Organization 2012).

The thesis will present a feminist, post-structural, critical discourse analysis of *R v Ryan* at the Supreme Court of Nova Scotia level. The focus is on how Nicole Doucet<sup>1</sup> is constructed through a Victim/Criminal binary construct by way of the negotiation of discourses of emphasized femininity, psychology and legal credibility, by the crown and defence counsel in *R v Ryan*. The Victim/Criminal binary construct occurs when women are categorized as Victim or Criminal, without consideration for the complexities of their lived experiences. Women charged with self-defensive violence are better understood through a "victimization-criminalization continuum" (Balfour 2008: 115). Drawing on the work of cultural studies scholar Andrea Smith and sociologist Luana Ross, (2004), feminist Criminologist Gillian Balfour (2013) has applied the concept of the victimization-criminalization continuum to describe the mitigating factors present in Aboriginal people's offending (i.e. the impacts and effects of colonialism) and how these narratives are and are not present in sentencing decisions (98-99). In the context of this

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<sup>1</sup> Unless referring to the case *R v Ryan* itself, Doucet will be referred to by her preferred (and legal) name rather than her former married name.

thesis, the term is used to describe the way that Doucet's victimization and criminalization intersect and inform the context of her experience. The thesis will also analyze the ways that Doucet adds to the (discursively produced) narrative of abused women charged with self-defensive violence by resisting the gender scripts used to frame her as a Victim/Criminal within the trial. The thesis will argue that the analysis of women charged with self-defensive violence, that constructs them within a Victim/Criminal binary, is not intricate enough to interpret the discourse surrounding Doucet in *R v Ryan*. It will demonstrate the ways that Doucet was framed within the Victim/Criminal binary during her trial, as well as analyze the relationship between manifestations of Doucet's victimization and criminalization and the outcome of her trial. The thesis will show how the discourse surrounding Doucet is further complicated by the Supreme Court of Canada decision to overturn her acquittal and the negative media attention that has followed, which demonstrates that women charged with self-defensive violence are better represented by a "victimization-criminalization continuum," (Balfour 2008: 115).

### **I. Consequences of Violence Against Women**

A woman is murdered by her male partner every six days in Canada (Statistics Canada 2009: 14). Women are more likely to be the victims of spousal homicide; they are ten times more likely to be killed by a partner than males are (Statistics Canada 2011: 6). On any given day, more than three thousand women (and their twenty-five hundred children) are living in emergency shelters to escape violence in intimate relationships, and they are more likely to be killed once separated from their partners (Statistics Canada 2009: 12, Statistics Canada 2011: 6). Forty thousand arrests for domestic violence occur every year, but the number of occurrences is much higher, as only 22% of incidents are

reported to the police (Statistics Canada 2009: 5) and women are now *less* likely to report incidents of victimization than in the past (Statistics Canada 2010: 11). Females continue to report more serious forms of victimization—such as being sexually assaulted, beaten, choked and threatened with a gun or knife—as well as emotional and financial abuse (Statistics Canada 2011: 14).

Because violence against women in the context of relationships has consequences that surpass this personal extreme (for example, the cost of violence against women in Canada—for health care, criminal justice and social services—is calculated to be 4.2 billion per year) it is a vitally important issue (Statistics Canada 2006: 34). Violence affects women, and we need an effective criminal justice response in place (among other things, such as gender equity, education and prevention) in order to eliminate it.

## **II. Women’s Self-Defensive Violence**

Women can and do commit violence in the family context—especially towards children—but women’s violence against men in intimate relationships is significantly different in terms of motivation, force and injury (Miller 2005: 15). Women engage in violence, however research shows that their violence tends to be self-defensive in order to escape, protect themselves or attempt to fight back against a male attacker (Statistics Canada 2010: 33). In contrast, men use violence to control, intimidate and punish women (Miller 2005: 29).

In her work with battered women charged with self-defensive violence, feminist criminologist Susan Miller (2005) addresses the important paradox of women’s violence in intimate relationships; in these situations, the *victim* often becomes the *offender* (1). Her research aims to address this paradox, and the question that follows: what is the

appropriate criminal justice response to battered women who, as legally defined, “assault” their abuser, especially when these acts of violence are contextually different from the acts of violence committed against them? (2) Miller, (2005) argues that in order to properly answer these questions, and solve the policy dilemmas that follow, it is important “to examine the contexts in which victims of violence resort to using violence themselves” (1).

Miller’s (2005) study of female offenders and the American Criminal Justice System identifies three types of violent behaviour that women participate in. The first, “Generalized Violent Behaviour” refers to violence used in many circumstances and against many different people—not just in intimate relationships, and accounts for 5% of women’s violence (113). “Frustration Response Behaviour” accounts for 30% of women’s violence and occurs when women with histories of victimization respond to stressful situations or encounters with their partners that might lead to violence (116). The majority of women’s violence—65%—is “Defensive Violence;” when violence is used by a woman “in response to either an initial harm or a threat to them or their children that they knew was realistic given their past experiences with the batterer” (128). The overwhelming majority of women’s violence against men is self-defensive, a context that often gets lost within the Criminal Justice System (Miller 2005: 128, Wesely 2006: 318). This thesis examines a case in which a woman is charged with self-defensive violence (counseling to commit the murder of her abusive husband), and examines the context of her gendered victimization as central to understanding that violence.

### **III. *R v Ryan*: The Case**

*R v. Ryan* gained national attention in the spring of 2011, when the Supreme Court of Nova Scotia upheld the acquittal of Nicole Doucet, who was prosecuted for counseling to commit the murder of her abusive husband after she tried to hire an undercover RCMP officer to kill him for \$25 000. According to Doucet’s testimony and expert witness accounts by a forensic psychiatrist, in their sixteen years of marriage, Doucet was repeatedly assaulted, raped, verbally degraded and threatened (including having a gun pointed to her head on numerous occasions). According to Doucet, Michael Ryan regularly described to her, in detail, how he would murder her and their daughter, Aimee, and dispose of their bodies. After Doucet and Ryan separated in December 2007—three months before Doucet was charged—Ryan stalked Doucet by showing up at her place of employment and home, following her as she was driving and making repeated phone calls to her home and cell phone. Doucet called 9-1-1 and was told that the “police didn’t get involved in family matters,” (*R v Ryan* 2010: 6).

According to Doucet’s testimony, she made 21 attempts to enlist help from the authorities—including 9-1-1, the Digby County Police, Nova Scotia RCMP, victim services and the military police—whom she called twenty-one times in the lead up to her arrest (*R v Ryan* 2010: 6). She was repeatedly pushed aside, told that the situation could not be interfered with because it constituted a “family dispute,” and was offered no help for her or her daughter who were being repeatedly threatened. According to Doucet’s lawyer, the response of the police was, “What do you want me to do about it?” (*R v Ryan* 2010: 6). This is especially interesting, as it was an undercover RCMP officer that approached Doucet, after getting an anonymous tip, and offered her an “easy fix” to her

problem, before arresting and charging her with a violent offence that carries a punishment of up to 25 years in prison.

Doucet's history of victimization began soon after they were married on April 16, 1992 after meeting at a military leadership retreat. She testified that the first violent incident in their relationship occurred in 1994 after a disagreement in a discussion of politics with a neighbour (*R v Ryan* 2010: 5). Doucet had agreed with the neighbours' high opinion of Pierre Trudeau and upon return home Ryan began to yell, squeeze Doucet's neck, push her up against the wall and punch a hole through the wall beside her head. Doucet indicated that she never disagreed with her husband again, and especially tried to steer conversation away from topics that she knew he had strong conservative opinions on, especially issues relating to racial and cultural minorities (*R v Ryan* 2010: 5).

By 1996, Doucet was regularly subjected to threats of violence including, "don't fucking test me" as well as sexual assaults. Ryan threatened Doucet's life first in 1997 by putting his hands around her neck, squeezing it and yelling that he would "wring her scrawny little neck." On March 20, 2000, Aimee, Doucet and Ryan's daughter, was born; Ryan abused Doucet in front of Aimee since her birth. Between 2000 and 2004, there were many incidents when Ryan pointed a gun to Doucet's head (*R v Ryan* 2010: 7). For example, in 2000, Ryan was firing guns in the backyard late one night. Doucet told Ryan he should not be doing that because he might wake up the neighbours, and Ryan pointed a gun at Doucet and laughed while calling her a "weak soldier" (*R v Ryan* 2010: 7)

According to Doucet's testimony, her situation got progressively worse in 2004; Ryan was repeatedly threatening Doucet and Aimee's life. Ryan would take Doucet and Aimee into the backyard and show them where he was going to bury their bodies (*R v*

*Ryan*, 2010: 7). In 2006, Ryan forced Doucet to take money from her estranged mother's bank account and when she refused to sign a legal document swearing that the money was a gift, he told her he would "destroy her" (*R v Ryan* 2010: 7). Doucet testified that in December 2007 she was at her breaking point and had to leave with Aimee and live in hiding. When Ryan found out that Doucet wanted a divorce, he threatened to burn the house down with her and Aimee inside. Through December, January and February 2007, Ryan stalked Doucet, including phoning her over twenty times a day and refusing to leave the parking lot at the school where Doucet worked as a teacher. Doucet was arrested on March 27, 2007 (*R v Ryan* 2010: 2).

*R v Ryan* was first heard at the Supreme Court of Nova Scotia on December 7-9 and 14, 2009 and January 25 and 29, 2010. Doucet was charged with counseling to commit the murder of her husband, and her defence attorney argued that this crime was committed in duress. At ¶ 11 of the Supreme Court of Nova Scotia judicial decision, the Justice outlines the four necessary elements required for a defence of duress:

"(1) The accused must act solely as a result of the threats of death or serious bodily harm to himself or herself or another person; (2) The threats must be of such gravity or seriousness that the accused believed the threats would be carried out; (3) The threats must be of such gravity that they might well have caused a reasonable person in the same situation as the accused to act in the same manner... (4) The accused must not have had an obvious safe avenue of escape," (*R v Ryan* 2010: 4).

Based on Doucet's testimony—supported by psychiatric expert witness testimony—of the above narrative of her abusive relationship, the Justice came to the conclusion that the four elements of the defence of duress were established to the requisite standard (*R v Ryan* 2010: 26). The crown appealed this decision, stating that the "trial Judge erred in law finding that there was an air of reality to common law defence of duress in

circumstances where the person whose behaviour was alleged to have caused the respondent [to] fear for her safety was the same person who was the intended victim of homicide commissioned by the respondent” (*R v Ryan* 2010: 1). The crown maintained that the four elements of duress could not be met, in particular the element requiring it be shown that there was no safe avenue of escape available to the victim, and that “no properly instructed jury...could acquit the respondent on the basis that there was no safe avenue of escape as an alternative to an arrangement to kill the Respondent’s husband” (*R v Ryan* 2010: 1) The crown further argues that the Justice failed to consider that the actions of Doucet, in attempting to hire a hit man, were not “proportional” to the threat Micheal Ryan presented to her (*R v Ryan* 2010: 2).

The Nova Scotia Court of Appeal upheld Doucet’s acquittal on January 25, 2011. The appeal was dismissed based on that fact that the judge did not err when he found that the defence in this case had an “air of reality<sup>2</sup>” and that “the defence of duress extends to the unique facts of this case,” (*R v Ryan* 2011: 2). The crown appealed this decision as well, and the Supreme Court of Canada heard *R v Ryan* on June 14, 2012. In a rare occurrence, the Supreme Court of Canada, in its majority opinion (7-1), issued a Stay of Proceedings on the case, citing as its reason:

“The circumstances of this case are exceptional...although the appeal should be allowed, it would not be fair to subject [Doucet] to another trial. The abuse she suffered and the protracted nature of these proceedings have taken a toll on her. The law of duress was unclear, which made resort to the defence at trial unusually difficult. Furthermore, the Crown changed its position about the defence between the trial and appeal process, raising a serious risk that the

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<sup>2</sup> The “air of reality” test used in legal cases to determine if a defence is plausible. It determines whether a properly instructed jury could acquit on the basis of the defence, and as long as there is an “air of reality,” the defence is entitled to be considered by the courts (*R v Ryan* 2010: 3).

consequences of decisions made during the conduct of Ryan's defence cannot be undone in the context of a new trial" (*R v Ryan* 2013, SCC 3).

In this sense, the Supreme Court of Canada allowed the appeal on the grounds that duress did not apply in this case because Doucet was not under a direct threat compelling her to commit the offence, but because of the unique features of the case, Doucet would not be subject to a retrial.

#### **IV. Project Overview**

The thesis project is organized in two parts. Part one will conceptualize the project. Chapter one has provided a brief introduction on violence against women, and women's violence against men, as well as an overview of the case *R v Ryan*. Chapter two is a literature review on the relevant research outlining the historical emergence of violence against women as a social issue, recent perspectives on violence against women, a discussion on defining violence, recent legal responses to violence against women, the "Battered Woman's Syndrome," and theorizing women's victimization and criminalization. This review of relevant academic literature on violence against women and the criminal law contextualizes the findings on *R v Ryan*. Chapter three includes a discussion on the theoretical tools and methodology of the thesis. It will provide insight into critical language study and discourse analysis specifically, details on how I engaged with the data of *R v Ryan*, and a discussion on reflexivity and the methodological concerns of this project.

Part two of the thesis will consist of an analysis of the discourse. Chapter four will present a description of findings, namely data outlining the discourses of emphasized femininity, psychology and legal credibility used to frame Doucet's victimization-

criminalization by the crown and defence, in addition to Doucet's resistance to these gender scripts. Chapter four also analyzes the discursive findings in light of the literature and applies the theoretical framework to draw conclusions on the narrative of the Victim/Criminal binary construct that Doucet was subject to. Chapter five pulls together the relevant literature, research methodology and analysis to highlight the gendered power dynamics at play in *R v Ryan* and the significance of the Victim/Criminal binary to abused women charged with self-defensive violence.

This is a feminist, critical analysis of the legal discourse in *R v Ryan*; the focus is on how gender ideology and gendered relations of power are (re)produced, negotiated and contested in social representations, practices and relationships. The thesis shows how Doucet's victimization and criminalization was constructed with multiple (and often inter-connected) discourses by *both* the prosecution and the defence based on emphasized femininity, psychological discourses and legal credibility, and how these discourses were used to construct Doucet and her experiences through the Victim/Criminal binary. Additionally the thesis demonstrates that Doucet resists these gender scripts, enhancing our understanding of the dangers of using the Victim/Criminal binary construct, and the need to account for abused women's experiences through recognition of a "victimization-criminalization continuum." (Balfour 2008: 115).

## **CHAPTER 2: LITERATURE REVIEW & BACKGROUND**

Violence against women emerged as a social issue during the women's liberation movement of the 1970's, however observations of its existence emerged through family social welfare documents in the nineteenth century, mostly as an afterthought in addressing complaints about children's welfare (Gordon 1988: 3). Until western second-wave feminists lobbied for its explicit recognition, as well as legal and social policies to address it, male violence against women was considered a normal part of marriage and confined to the "private" sphere, thereby largely keeping it from public attention (Sangster 2001: 48). In fact, up until 1879, wife assault was a legally proscribed right of men "to control and chastise their wives through physical force" in Western legal systems (Dobash & Dobash 1978: 168).

The purpose of this chapter is to provide a literature review on the legal responses to male violence against women in Canada. Literature that analyzes how male violence against women has been addressed through the law will be reviewed with the purpose of highlighting unintended consequences of legal policies that aim to address woman battering, and demonstrating a gap in the literature that this thesis aims to address. Socio-legal, feminist and psychological literature—primarily from Canada and the United States—is reviewed with the purpose of considering the history, perspectives and definitions surrounding violence against women. The literature will help contextualize the questions that frame this thesis project: what are the gender scripts used to construct women who have experienced violence by a male partner? How are these gender scripts reproduced in the law and are there attempts at relying less on gender scripts in the courts

given the literature on the unintended consequences that result from the use of the Battered Woman's Syndrome?

This chapter will help to locate—academically and legally—the origins of victimization and criminalization gender scripts such as the “Battered Woman's Syndrome,” as part of the defence of an abused woman who has engaged self-defensive violence against a male abuser. This chapter will highlight how gender scripts are used in the victimization and criminalization of women who experience violence by a male partner in Western countries, which will allow for an analysis of Doucet's experience as constructed in *R v Ryan*.

This thesis will argue that the current analysis of women's victimization, that constructs them within narrowly defined gender scripts, is not intricate enough to interpret the discourse surrounding Doucet in *R v Ryan*. The project will add to the current literature on women's linked victimization and criminalization (Balfour, 2008 and Miller, 2005) by showing how Doucet's victimization and criminalization were constructed with multiple (and interconnected) discourses by *both* the prosecution and the defence based on emphasized femininity, psychological discourses and legal credibility and used to construct her as Victim *or* Criminal. It will prove that this binary is problematic and does not adequately take into account the lived experiences of the violence in Doucet's marriage and her need to protect herself and her daughter from threats against their lives by her abusive husband. Additionally the thesis will demonstrate that Doucet resists the narrow gender scripts of victimization and criminalization that are attributed to her, enhancing our understanding of the interconnections of the “victimization-criminalization continuum” that is described in

previous research (Balfour 2008: 115). The chapter will provide background on the historical emergence of violence against women as a social issue and more recent perspectives on violence against women. Then the chapter will examine literature on more recent legal responses to violence against women and the victimization-criminalization that abused women often face.

### **I. Historical Emergence of Violence Against Women as a Social Issue**

Official U.S. social welfare documents and records of violence against women date back to 1870 (Gordon 1988: 3). Linda Gordon (1988) juxtaposes the United States history of violence against women against the dominant discourse that maintains it is a relatively new social issue. She presents a historical record of responses to violence against women, as represented through medical, social work and community response documentation. Additionally, she reviews men's justifications for using violence and women's resistance strategies.

"Wife-beating," as it was first called, was recognized in the late nineteenth century. Beginning in 1875, a moral reform movement was led, mostly by men, who advanced the discourse that "real" men do not beat their wives (Gordon 1988: 19). Upper-class, white, heterosexual men led a campaign that called for harsher sentences for wife beaters and increased criminal prosecutions. They put forth the notion that violence against wives, a "brutality against the weak," was cowardly and unacceptable (Gordon 1988: 255). This meant that a new discourse of masculinity was established: bourgeois norms required men to have "self-control, containment and authoritative rule," when "disciplining" their wives (Gordon 1988: 255). From 1910 onward, family violence agencies began to hear complaints of wife abuse through their child protection efforts.

Addressing family violence through social service agencies meant that it became professionalized as the social sciences began to advance the notion that there was a scientific explanation for both batterer and victim behaviours (Gordon 1988: 255).

The social work response from 1910-1930 was largely committed to “protecting the nuclear, conventional family” (Gordon 1988: 22). This was done by encouraging reconciliation and intervening only in cases for “deserving mothers” (Gordon 1988: 253). Additionally, the legal system emphasized the separate spheres of husband and wife because this was said to minimize conflict, an idea that was widely upheld during the great depression (Gordon 1988: 255). The separate domains of men and women were highlighted during the 1930’s in public discourse, which resulted in family violence being de-emphasized in favour of policies aimed at economic revival (Gordon 1988: 20).

According to Gordon (1988), in the 1940’s, the “pro-family” movement was re-established. Although wife beating was not technically allowed, patriarchal fathers were encouraged to “control” their households (257). At this time, the definition of abuse became professionalized by psychologists, who often claimed abuse arose from women’s complaints about alcohol consumption and continual demands for sex. Men aimed to legitimize their violence against women by claiming that their wives were poor housekeepers and neglectful mothers, making themselves seem like the aggrieved party (Gordon 1988: 260).

Western feminism in the 1960’s and 1970’s pushed forth the idea that male violence against women is a social problem that is sanctioned and controlled through culture, religion, law and rigid gender norms (Gordon 1988: 285). Western feminist activists wanted to show that men’s violence against *some* women reinforces *all* women’s

subordination and tirelessly fought for feminist battered women's support services, crisis lines and shelters (Gordon 1988: 271-282).

Gordon's book challenges the claim that violence against women is a new social issue. Gordon's (1988) research outlines the emergence of the importance of gender scripts in the response to male violence against women. Of particular importance to this thesis project is the notion of the state intervening only in cases of "deserving" mothers and "good" victims. The existence of this pattern has been the consensus through the literature (Goodmark 2009: 23, Miller 2005: 3 Gordon 1988: 252, Sangster 2001: 82). However this thesis will show that in *R v Ryan*, Doucet presents as the ideal victim—a good wife and mother—and the Nova Scotia Crown still repeatedly criminalized her through an RCMP sting operation and relentless appeals of her acquittal through the courts.

Joan Sangster (2001) also provides a history of legal responses to violence against women in Canada from 1920 onwards. She argues, "legal strategies for dealing with violence are linked to the broader ideological context of the time" (Sangster 2001: 47). She explains that violence was encouraged by struggles within the patriarchal family and linked to patterns of male control, aggression and hostility towards women (Sangster 2001: 49). Sangster (2001) confirms Gordon's (1988) analysis of historical documents that prove violence against women as a social issue emerged through the professionalization of social work and psychology beginning in 1910, as well as the de-emphasis on violence against women during the Great Depression (in favour of economic policy).

Although a family court was established in 1929 in Toronto to deal with violence in the family, criminal courts have attempted to address wife assault since the 1920's (Sangster 2001: 47-48). Sangster explains that many women only resorted to formal legal charges when they were "desperate, battered repeatedly or when they had dramatic evidence that would convince the magistrate they were telling the truth" (Sangster 2001: 62). Within the courts, violence against women was (and still is) overlooked and accepted, particularly against women of colour. (Sangster 2001: 62, Belknap 2007: 153). Social science and medical discourse was (and still is) heavily used within the courts to explain batterer and victim behaviour. Historically, psychological counseling was almost always the answer, but this operated as a disciplinary practice that focused more on women's inherent psychological and behavioural flaws than on the abnormality of male's violence against women (Sangster 2001: 63).

Women's right to legally separate from their abusive husbands was granted in 1950, but only as a last resort and if the woman was an honourable victim—"a good wife and mother" (Sangster 2001: 82). Medical testimony was often needed to support a woman's case, and the woman's marital, sexual and family lives were on display for the courts' sympathy or sentencing (Sangster 2001: 82). Sangster (2001) argues that this "gendered ideology of protection ingrained within the legal system reproduced the notion that freedom from violence was not an inherent right of all women, but rather, was limited to decent, dutiful, loyal wives" (Sangster 2001: 84).

Gordon and Sangster's work on the history of official responses to violence against women provide historical background to analyze the case material of *R v Ryan* and connect it to socio-political responses to violence against women in the past and

present. A review of the history has allowed for an analysis of the evolution of policies and procedures that have been implemented in relation to male violence against women. This has given me insight into the way that *R v Ryan* was dealt with by the police and courts and allowed for an understanding of the legal process Doucet encountered.

## **II. More Recent Perspectives on Violence Against Women**

English criminologists Rebecca Emerson Dobash and Russell P. Dobash (1978) were among the first scholars to place violence against women in the wider socio-historical context of patriarchy and the feminist perspective on violence against women that they described is still important. They argue that wife abuse is

a form of behaviour which has existed for centuries as acceptable, and, indeed, a desirable part of a patriarchal family system within a patriarchal society, and much of the ideology and many of the institutional arrangements which supported the patriarchy through the subordination, domination and control of women are still reflected in our culture and social institutions (169).

Dobash and Dobash assert that this context is a crucial component that leads to a more complete understanding of violence against women (168). The feminist perspective on violence against women that Dobash and Dobash advocated argues that the home is the place where women most frequently experience violence, and typically as survivors rather than perpetrators. They argue that violence against women largely continues because male authority is “protected by social institutions and reinforced and perpetrated through socialization” (173). Further, they write, “violence used by men against women in the family attempts to establish or maintain a patriarchal social order,” which means that men’s violence in relationships is about controlling women, while women’s violence is typically self-defensive (176). Although domestic violence is no longer legal, an

understanding of the framework in which male violence against women occurs, and the ideologies that normalize it, shows that it is still intertwined in present social, economic, political, religious and legal practices (179).

American feminist theorist bell hooks (2000a) argues that activists view male violence against women within relationships as distinct from other forms of violence because “it is specifically linked to the politics of sexism and male supremacy: the right of men to dominate women” (117). However, she attributes this to the overall acceptance of a culture of violence that socializes us to believe that it acceptable to control others through coercive force, and argues that this culture must be eradicated before we see the end of violence against women (hooks 2000b: 61).

A feminist perspective on violence against women frames the epistemological standpoint of this thesis project. Both Dobash and Dobash and hooks have contributed to my understanding of feminist stances on violence and my understanding of male violence towards women.

Theories that attribute violence against women to broader social forces have also framed my understanding of *R v Ryan*. Canadian criminologists Walter DeKeseredy and Linda Macleod (1997) explain sociological and individualistic perspectives on violence against women. Sociological theories of violence against women see violence as a function of broader social forces (DeKeseredy and Macleod 1997: 35). Sociological theories of violence against women assert that violence is a learned behaviour; and

DeKeseredy and McLeod (1997) state that factors such as poverty, unemployment and stress are risk factors for the perpetuation of violence<sup>3</sup> (DeKeseredy & McLeod 2010: 46).

Individualistic theories of male violence towards women find the cause of abuse within the attacker. For example, as Katherine van Wormer and Clemens Bartollas (2011) explain, biological theories attribute male violence against women to low serotonin levels in the brain, high testosterone production and brain damage; psychological theories of abuse name low self-esteem, childhood victimization, inability to control negative emotions and poor impulse control as causes for men's violence against women (254-255). Biological and psychological theories of violence against women attribute male violence to individual traits that make men more likely to commit violence because they are pathological, "sick" offenders (DeKeseredy & McLeod 1997: 31).

DeKeseredy and Macleod (1997) name many problems with viewing male violence towards women from an individualistic standpoint. Theories that claim biological and psychological defects within men that use violence against women cannot explain why men target female partners because "they ignore the unequal distribution of power between men and women in intimate contexts" (34). DeKeseredy (2011) points out additional problems with individualistic theories of violence against women. He argues that these explanations can also be used to attribute mental illness and personality disorders to "why women stay" (60). This erases the context of male violence towards

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<sup>3</sup> Although violence against women occurs across all socio-economic and racial communities, research shows that domestic violence is over-policed in racialized and poor communities (Ruttenburg 1994). For an example of research on violence against women by privileged men, see Webb's (2012) *Unsportsmanlike Conduct: Curbing the Trend of Domestic Violence in the National Football League and Major League Baseball*.

women and contributes to blaming women for their partners' abusive behaviour. This is especially important as it informs the victimization and criminalization that abused women charged with defensive violence encounter, especially the victim script of the "Battered Woman's Syndrome" discussed below.

### **III. Defining Violence**

Defining the *violence* in violence against women, a seemingly simple task, has proven challenging for governments, the law and society. Over the past twenty-five years, there have been significant changes to the generally accepted definitions and terminology associated with male violence against women (DeKeseredy and Macleod 1997: 12). DeKeseredy (2011) explains that there is controversy over whether to define violence narrowly or broadly and that such disagreements "are not trivial: they seriously affect how data is gathered, as well as the quality and quantity of social support services for women." Further, definitions are used as tools in political struggle to advocate for policy, legal and social change (5).

Narrow definitions of violence that focus mainly on physical abuse are popular with political conservatives who argue that studies which measure violence against women—like the Canadian National Survey of Woman Abuse in University and College Dating—inflate rates of abuse based on a definition that is too broad (DeKeseredy 2011: 5). According to DeKeseredy, (2011) even some feminists prefer narrow definitions of abuse and argue that violence gets "trivialized" with broader definitions. Other feminists see psychological abuse as a "warning sign" for further violence (6).

There are many problems with assuming a narrow definition of violence against women. Studies that focus on particular acts of abuse produce lower measurements of

violence against women that are not reflective of women's lived experiences (DeKeseredy 2011: 7). Further, as DeKeseredy (2011) argues, policy change occurs when big numbers are reflected through studies: "if government officials are led to believe that violence against women is not a statistically significant issue, they are not as likely to devote significant resources to prevent and control it" (7).

Research shows that women face multiple sources of victimization, including physical violence, psychological abuse, economic blackmail, coercive control and stalking behaviour (DeKeseredy 2011, DeKeseredy & MacLeod 1997, Dobash & Dobash 1979). It is because of the harms associated with these acts that many scholars choose to define violence more broadly. DeKeseredy (2011) notes that "just because there is no threat or actual use of force does not mean that an experience is not terrifying, emotionally scarring or highly injurious" (11). Despite opposition to broadening the definition of abuse, there has been a move towards accepting broader definitions of violence against women. Researchers, social science agencies and governments are beginning to see the merits of broad definitions of violence, such as more accurate results that better reflect the experiences of abused women (DeKeseredy 2011: 12).

An additional point of contestation in the definition of violence is whether to use gender-neutral language in law and policy. The promotion of gender-neutral language when defining violence against women as "family violence" or "intimate partner violence" began in the 1980's and continues to be supported by studies that show women participate in relationship violence at an equal rate to men without examining context, motive or outcome (DeKeseredy 2012: 12).

Violence within families takes on many forms. Although women can be, and are violent towards both male and female partners and children, the majority of violence that occurs within families is men's violence against women (Miller 2005: 7-9). Recognizing the many stances on defining violence, when conducting the research on *R v Ryan*, I used the United Nations' broad, gender-specific definition of violence against women:

recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty and dignity...affirming that violence against women constitutes a violation of the rights and freedoms of women...and recognizing that violence against women is a manifestation of historically unequal power relations...the term violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life (1993: A/RES/48/104).

#### **IV. More Recent Legal Responses to Violence Against Women**

Since the recognition of wife assault as a problematic social issue and feminist advocacy to bring "private" family violence into the "public" sphere, there have been legal interventions with the goal of reducing its incidence and harms. Looking at previous Canadian legal responses to violence against women helps place *R v Ryan* within broader social, cultural and legal perspectives on violence against women.

Feminists often debate whether the law can be a useful tool in ending violence against women; can a fundamentally patriarchal system really be used for the emancipation of women? Some feminist socio-legal scholars believe that legal responses to violence against women are a vital advancement that recognizes women's right to be free of male violence (see for example, Walker, 2009). However, Canadian legal scholar Elizabeth Sheehy (1999) argues that, "law alone cannot end violence until all women's equality is fully realized" (62). In 1970, The Royal Commission on the Status of Women

was appointed to research and conceptualize violence against women as a formal equality issue and make recommendations to limit the reflection of women's unequal status in codified law (Sheehy 1999: 63-64). Sheehy (1990) argues that we must address women's unequal status in codified law and that, to ensure laws actually protect women, legislation must address the context of women's lived experiences of inequality (70).

Phyllis Goldfarb (2005) outlines previous US legal strategies for dealing with violence against women by a male partner. She highlights the use of civil protection orders, arrest and prosecution as well as alternative forms of dispute resolution such as mediation, civil lawsuits and restorative justice programs. She also outlines clemency projects, which are used to reduce or eliminate the criminal sanctions placed on battered women charged with self-defensive violence. Legal Responses in Canada have been similar (Sheehy 1999: 64-66, Goldfarb 2005: 213-217).

Civil protection orders are used to direct a batterer to stay away from the woman he is abusing for a certain length of time, usually thirty days. Civil protection orders—commonly referred to as restraining orders—and the protection they provide depend on factors such as how available they are to women and how well authorities respond to requests and enforce them (Goldfarb 2005: 213). As Goldfarb (2005) argues, “jurisdictions vary as to how much outreach is provided to victims as well as assistance in using this process” (214); she adds that the differing policies among provinces and cities disadvantage women, who may become frustrated and confused by the “process” they must pursue in hopes of temporary protection. Civil protection orders have also been criticized because they are provisional and can place women in greater danger once they expire. Additionally, there has been considerable debate as to how much protection “a

mere piece of paper” can provide to abused women in serious, violent situations (Goldfarb 2005: 215). In *R v Ryan* Doucet continually asked for help and applied for a protection order to protect both her and her daughter, but was discouraged from continuing the application as the authorities told her that it would offer little, if any, help to her situation (*R v. Ryan* 2011: 7). This is a common response that women get when they turn to the police (Meloy & Miller 2011: 119).

The most common legal response to violence against women is the arrest of the batterer. Legal reforms have led to an increase in the policing of domestic violence. However, structural factors remain that need to be addressed, including police discretion and the discourse of “family privacy” (Goldfarb 2005: 213). One proposed solution to counter these factors has been the implementation of mandatory charging policies for cases of domestic violence. Some jurisdictions do this through general assault and battery laws, while most in Canada have separate statutes for violence against women (Goldfarb 2005: 215). Goldfarb writes that “mandatory reporting, arrest and prosecution are legal reforms intended to counter the long and notorious history of law enforcement’s failure to respond to victims of intimate violence” (216). However there are disputes as to the effectiveness of these policies and, in some cases, these policies have been harmful and counter-productive, most prominently through the counter-charging of women in violent homes (216). Because of colonialism and racism in Western countries, women of colour and Aboriginal women are particularly affected by these policies and over represented in Canada’s jails and prisons (Balfour 2008: 102). Chapter four contains a detailed discussion of *R v Ryan*, but it is interesting to note here that Doucet called the authorities for help (including 9-1-1, the RCMP and the Digby County Police) a total of twenty-one

times in the three months leading to her arrest for counseling to commit the murder of her abusive husband (*R v. Ryan* 2010: 6).

Australian sociologist Lesley Laing (2008) demonstrates that in terms of violence against women, in Western countries, a “wide range of policy and practice responses have been implemented, incorporating reforms and initiatives across diverse domains such as community-based women’s services and the legal, health, housing and child protection sectors” (67). Laing focuses on the negative consequences of criminal justice reforms addressing violence against women. Apart from the increase in numbers of women arrested through mandatory, zero-tolerance arrest policies, abused women face systemic barriers, such as a lack of timely and accurate information about the legal process, restorative programs and possible defences, the postponing and cancellation of proceedings and pressure to plea bargain rather than support to win cases, from legal actors (72). Additionally, the incident-driven nature of the criminal justice system ensures that only “*some* elements of women’s experiences are dealt with by the legal system,” which removes the violence they experience from the context of the aggressor’s tactics of coercive control (Laing 2008: 73). Laing argues that these unintended consequences are problematic because they have real effects on women who turn to the criminal justice system.

Women who experience abusive relationships are often reluctant to rely on formal criminal justice interventions (Meloy & Miller 2011: 127). American criminologists Michelle Meloy and Susan Miller (2011) argue that women’s unfamiliarity with the court process, limited knowledge of their options and limited power work to re-victimize women who look to the criminal justice system for help, and that true victim

empowerment is best achieved by giving women control over the outcome of criminal justice responses (130). They write,

while many advocates embrace a harsher criminal justice response to battering (largely to make up for years of indifference and trivialization) policies that target the ‘wrong’ offender were not the intended outcome...criminal justice personnel and victims’ service providers need to recognize and acknowledge the rights of victims, respect their choices, avoid victim-blaming, provide them with options for informal and formal actions/redress and work to actively support them (Meloy & Miller 2011: 147-148).

Legal responses to violence against women, as well as their unintended negative consequences, contextualize the experience that Doucet encountered through her legal narrative by showing how the police failed her, the crown criminalized her—despite two court acquittals—and the defence also victimized her by relying on a set of complex and competing gender scripts. The police were not there to offer her help or protection, the RCMP arrested her during an undercover operation and the Nova Scotia Crown relentlessly pursued the case up to the Supreme Court of Canada. By contextualizing the unique features of *R v Ryan* in relation to the legal responses to violence against women, this thesis will improve our understanding of the discourse surrounding women charged with self-defensive violence.

### **V. The Battered Woman’s Syndrome**

The Battered Woman’s Syndrome was first legally recognized in Canada in the 1990 case of *R v Lavallee* (Comack: 2002: 277). The Battered Woman’s Syndrome is a psychological condition defined by American Psychologist Lenore Walker in 1982. She aimed to use “learned helplessness” theory to explain why women stay in abusive relationships (Walker 2009: 1-3). Expert testimony on the Battered Woman’s Syndrome

is often introduced in the courts when a woman's experience with abuse may be a mitigating factor in her case (Comack 2002: 276). The Battered Woman's Syndrome is a victim script that has been called upon in court in Canada since *Lavallee* to legitimize the experiences of women who have experienced violence. Although the drawbacks of using the Battered Women's Syndrome in the courts have been consistently pointed out (Comack 2002: 277-285, Sheehy 2002: 473 Shaffer 1997: 47-59), it plays a significant role in *R v Ryan*.

The Battered Woman's Syndrome is based on two theories: the cycle of violence and learned helplessness. The cycle of violence theory outlines three distinct phases in a battering cycle: the tension-building phase, acute battering incident and loving-contrition phase. Walker (2009) argues that each stage carries with it specific acts, responses and emotions and together they play out into a cycle of abuse (93-94). Six groups of relationship criteria are used to assess the cycle of violence in a relationship: excessive possessiveness and jealousy, extreme verbal harassment, restriction of activity, threats of future punishment, sexual assault and acute physical attacks (Walker 2009: 42). Walker (2009) argues that the cycle of violence promotes women to learn that there is non-contingency between the actions they experience and their own response and outcome; this is learned helplessness. Walker (2009) says learned helplessness is the loss "of ability to control what happens to oneself." (69).

The Battered Woman's Syndrome has been used in the courts when presented by expert testimony to help explain why a woman in a battering relationship may both be unable to leave and eventually "snap." Walker (2009) presented the idea that the cycle of violence women encounter in abusive relationships could lead to learned helplessness and

eventually to a woman becoming overwhelmed and unable to control her own actions or perceive the consequences that follow (69-71). In the courts, this explanation is used to refute the criminal liability of women, at the expense of them being perceived as irrational, incompetent actors. The defence was legitimized when the Supreme Court of Canada upheld the acquittal of Angelique Lavallee, who was charged with the first-degree murder of her husband. Lavallee shot her common-law husband in the back of the head during an altercation after he threatened to “get her if she didn’t kill him first” (*R. v. Lavallee* 1990: 3-4). Lavallee received an acquittal by jury on the basis that she suffered from the Battered Woman’s Syndrome and had acted in self-defense, a decision that was upheld by the Supreme Court of Canada, setting legal precedent. *R. v. Lavallee* gained attention because it marked the first time in Canada that a battered woman received an acquittal on a murder charge on the basis of self-defence. It called attention to the legal issues around self-defence, and created an opportunity for the protections of the law of self-defence to be extended to female victims of abuse. While on the surface it looked as though it could be a promising legal solution to women prosecuted in relation to intimate violent relationships, many feminists and legal advocates argue that the actual effect of *R. v. Lavallee* on social change is minimal (Comack 2002, Comack & Balfour 2004, Shaffer 1997). Further, they say that *R. v. Lavallee* has had negative unintended consequences.

Shaffer (1997) describes two of the problematic consequences of relying on the Battered Woman’s Syndrome to explain women’s behaviour. First, the Battered Woman’s Syndrome threatens to establish a stereotype of the authentic battered woman as the only deserving victim (9). It does this by codifying, and legitimizing through the discourse of law, the experiences of a particular type of abused woman—one who

conforms to the model of learned helplessness that Walker (2009) describes in her research. Additionally, using the Battered Woman's Syndrome risks depicting women who experience abuse as dysfunctional, pathological and psychologically damaged by attaching the "syndrome" label to their experiences (Shaffer 1997: 10). Shaffer (1997) writes, "by making it seem as if staying in an abusive relationship is a faulty decision resulting from psychological deficits, Battered Woman's Syndrome deprives [the courts of] important information that would allow [abused women] to be viewed as reasonable actors rather than dysfunctional victims" (12).

Comack (2002) adds to the list of limitations in the use of the Battered Woman's Syndrome by arguing that it individualizes, medicalizes and de-politicizes an abused woman's experiences (281). It provides a stereotype of how the abused woman not only behaves, but should behave. The Battered Woman's Syndrome presumes that the normative response is for an abused woman to leave a relationship, however research shows that women often cannot—or do not want to—leave because structural barriers prevent them from doing so (Comack 2002: 280). Comack argues that the Supreme Court decision in *R v Lavallee*, and the use of expert testimony to substantiate the abused woman's legal defence, "affirms the expert's account as valid and empowers the psych profession to speak for abused women and to tell their 'truth'" (282).

The introduction of the Battered Woman's Syndrome in Canadian courts to help establish self-defence has been a double-edged sword. Although feminists and socio-legal scholars have pointed out the problems of its use, the Battered Woman's Syndrome plays a significant role in *R v Ryan*. Expert testimony is introduced to support the notion that Doucet is a "Battered Woman," and although there is resistance to the term itself, its

underlying principles are still heavily relied on by the defence to refute Doucet's criminal liability.

## **VI. Theorizing Women's Victimization-Criminalization**

The Battered Woman's Syndrome is an early victimization script that was used to help refute criminal liability in cases where abused women are charged with self-defensive violence. Theorizing women's linked victimization and criminalization within the context of self-defensive violence is a crucial component in understanding the discursive workings of the law. Because this type of "offending" is remarkably different than most violent offences, both in terms of motivation and context, it has been important to the work of this project to engage with the literature that focuses on the criminalization of abused women.

Wesley (2006) argues that gender is an integral variable when analyzing women's violence (304). Gender inequality and oppression in a patriarchal society impact the individual, institutional and structural marginalization that contribute to women's lived experiences, and "violence cannot be isolated from context" (Wesley 2006: 304). Because violence is not seen as a "natural" and "normal" feminine trait, Wesley (2006) argues that "female gender roles, socialization patterns and institutions forbid women's expression of violence" (306). This becomes problematic when abused women find themselves in situations where they perceive violence to be the only solution—in the case of *R v Ryan* the last resort in a string of unsuccessful pleas for help to the criminal justice system. Even when women do turn to the police for help, it rarely proves to be a helpful contact and can even act as an agent of revictimization (Wesley 2006: 318). This reaction from institutions put in place to *serve and protect* drive home the reality that women can only

depend on themselves for their safety; “from within this place of social, institutional and individual marginalization, violence emerges as an option to keep them, and oftentimes their children, safe” (Wesley 2006: 318). Abused women are not only revictimized by the police and the courts, they are revictimized by feeling unsafe, unprotected and silenced by both legal professionals and society, by perpetrators who experience few consequences and by the message that women’s value is minimized as violence against them is condoned and justified (Wesley 2006: 314). Additionally, there is a gendered component to women’s victimization and simultaneous criminalization: “patriarchal power relations shape gender differences in crime, pushing women to use violence [in response to] victimization... motivations for women’s violence arise from the refusal to be further victimized” (Wesley 2006: 325).

Miller (2005) asserts that women and men are not equally violent within relationships but the incident-driven police and courts respond uniformly to cases of domestic violence without examining the motivations and context in which victims of violence use violence themselves (1). She maintains women’s violence must be explored and evaluated in context because women’s violence is significantly different from men’s in terms of both injury and motivation. Without the evaluation of contextual factors in relationships, many female victims of ongoing battering have not only ended up with less protection and fewer support services, but also labeled as offenders themselves when they use force in intimate relationships in self-defence or to fight back against male violence towards them or their children (Miller 2005: 32). When gender is removed from the discussion of women’s use of self-defensive violence, it makes it easy to ignore the structural factors that lead to male battering of women (Miller 2005: 36). Women who

fight back with self-defensive violence are further criminalized for deviating from “natural” gender norms that see violence as a masculine crime (3).

The criminalization of abused women occurs when women experience violence by a male abuser, but they are the one who is treated like a criminal (“Stop Criminalizing Women” 2013). According to Goodmark, (2009) the Criminal Justice System treats battered women with suspicion at every turn (37). Police are hesitant to respond, and when they do, abused women often find themselves charged through mandatory arrest and counter-charging policies (Goldfard 2005: 316). Abused women charged with self-defensive violence often find their experiences scrutinized by the courts. Women are subject to victim-blaming through (common) questions, such as “why did she stay in the relationship if things were so bad?” and the implication that they “should” have left the situation if it was abusive (Belknap 2007: 355). Additionally, criminalization occurs through the pathologization of abused women’s reactions; when they fight back, they are often deemed mentally ill. When women are labeled mentally ill or criminal, their children can be taken away from them due to “failure to protect and provide for,” policies that treat women as abusers—even if their actions were attempts to protect their children (“Stop Criminalizing Women,” 2013). These are tools used to keep women from violating traditional societal expectations of the deserving victim, and work to criminalize women who do not conform.

Feminist legal scholars argue that women charged with self-defensive violence are often labeled *either* a victim *or* a criminal. However, the experiences of abused women charged with violence are better represented through a continuum of victimization and criminalization (Balfour 2008: 105, Miller 2005: 15). This continuum takes into account

the lived experiences of women who come into contact with the criminal justice system and how the intersections of race, class, status and other power relations inform their experiences (Balfour 2008: 105). The “victimization-criminalization continuum” also recognizes that when women are charged with violence or threat of violence against their male spouse, there is a high probability that the violence was self-defensive (Miller 2005: 15).

Goodmark (2009) writes that the stereotypical victim of abuse in the law is white, heterosexual and passive in the face of her partner’s power and control (23). Though some have recognized that this stereotype is not representative of all battered women’s experiences, the legal system has been slower to change the views on abused women that shape their treatment in the law. Hence, when battered women stray from the traditional definition, they are treated with suspicion. Gender roles drive this suspicion because “a battered woman who fights back defies the societal expectations of a ‘victim.’ They enter the courtroom with their credibility already in question by virtue of their failure to comply with the prevailing victim stereotype” (Goodmark 2009: 37). In fact, women’s use of self-defensive violence can be a resistance strategy: according to Goodmark (2009) “fighting back enables women to express their sense of themselves as powerful, resourceful and self-sufficient” (29). Yet women’s use of self-defensive violence to protect themselves is criminalized.

## **VII. Discussion**

The purpose of this chapter has been to examine literature on Criminal legal responses to male violence against women in Canada, as well as women’s victimization and criminalization. Reviewing the literature on abused women’s victimization and

criminalization reveals a gap in the literature that this thesis project addresses. There is academic work on the Victim/Criminal binary construct that abused women who participate in self-defensive find themselves situated on, but little research has been done on women who encounter multiple (albeit still stereotypical) narratives of appropriate victimization. This thesis project will show how, in *R v Ryan*, the narrative of *Doucet's* victimization and criminalization were constructed with multiple (and interconnected) discourses by the defence and prosecution based on emphasized femininity, Battered Woman's Syndrome psychological discourse and legal credibility. These descriptions were used to frame her as victim *or* criminal. The thesis will show how this dichotomous binary construct does not adequately account for Doucet's experiences. In addition, Doucet's resistance to gender scripts of victimization and criminalization prove that a "victimization-criminalization continuum" is more useful in describing the legal narrative of her experience (Balfour 2008: 115).

## **CHAPTER 3- THEORETICAL TOOLS AND METHODOLOGY**

This chapter will outline the thesis' theoretical tools and methodology: a summary of the theory, research methods and analysis that this project undertakes (Carter & Little 2007: 1317). It will start by examining the importance of epistemology and summarize my epistemological standpoint and the theories that aided in the analysis of *R v Ryan*, primarily work on "Power/Knowledge" by Michel Foucault and the "Woman of Legal Discourse" by Carol Smart. Then I will discuss qualitative research and critical language study, as well as provide an explanation of critical discourse analysis, the specific methods of this project. I will provide an explanation of the steps I took to analyze the trial data from *R v Ryan*, as well as the evolution of the thesis' argument and explanation. The chapter will end with a discussion on reflexivity and methodological concerns.

### **I. Theoretical Tools**

Epistemology means, literally knowledge, but also refers to a theory of knowledge (Carter & Little 2007: 1317). English Anthropologist Gregory Bateson referred to it as the "personal worldview and framework according to which a person operates" (Bateson in Becvar 2009: 73). Epistemology is important to consider because it impacts the methodology of a project (Becvar 2009: 74). The methodology and analysis of this thesis are guided by a feminist epistemology.

Feminist epistemology investigates the way gender influences what we take to be knowledge (Anderson 1995: 50). Feminist epistemology is a branch of social epistemology that investigates the influences of "socially constructed conceptions of gender and gender specific interests and experiences on the production of knowledge" (Anderson 1995: 54). Feminist epistemology and research maintains that society is

(hierarchically) gendered (Lazar 2005: 5). Canadian feminist linguistics scholar Michelle Lazar (2005) argues that when it comes to a theoretical understanding of knowledge, gender functions as an interpretive category that enables individuals to make sense of, and structure, their own social practices. Additionally, gender is a social relation that enters into and constitutes all other social relations and activities (5-6). In *R v Ryan*, Doucet's gender is continually considered and contested. Multiple, interconnected Crown and defense narratives based on psychological discourse, stereotypical femininity and credibility produce Doucet's criminalization and victimization in legal discourse. Doucet contributes to the legal discourse that frames her by objecting to, resisting and rejecting the confining discourses that are used by others to define her.

## **II. Power/Knowledge**

Foucault's study of power is relevant to the theoretical framework that has helped to unpack *R v Ryan*. Of particular importance are his work on truth and "Power/Knowledge."

Foucault was particularly interested in how the effects of truth are produced in discourses (1980: 119). He wanted to know what counts as truth, and argued that knowledge claims to truth can only exist with the support of arrangements of power (Fedar 2011: 56). Discourse contributes to "normalization," the institutionalization of what counts as normal, which then indicates "the pervasive standards that structure and define social meaning" (Fedar 2011: 62). Discursive truths are then embedded into social knowledge.

Foucault writes "the exercise of power itself creates and causes to emerge new objects of knowledge and the accumulation of new bodies of information" (1980: 51). He

questions how power produces these ways of knowing and how ways of knowing are shaped by specific power relations: “the exercise of power perpetually creates knowledge and, conversely, knowledge constantly induces effects of power” (Foucault 1980: 52). Therefore, power operates through complex networks that all social beings contribute to, and is shaped through knowledge production. Foucault asserts that bodies of knowledge (such as the law) are historically specific systems of meaning shaped by social practices, relationships and institutions. He argues that an analysis of these power connections requires that systems of differentiation between these practices, relationships and institutions be established and that “every relationship of power puts into operation differences that are, at the same time, its conditions and its results” (1980: 52).

Foucault’s theories on truth and Power/Knowledge have provided tools for unpacking Doucet’s criminalization and victimization within legal discourse. The implicit, normalized gender scripts that both the Nova Scotia crown and defence use to construct Doucet within the Victim/Criminal binary reflect dominant discourses and “solidify” social knowledge about abused women charged with self-defensive violence. Equally as important to Foucault, resistance must be understood itself as an expression of power (Fedar 2011: 63). The thesis considers how Doucet resists the scripts of criminalization and victimization attributed to her, demonstrating how *R v Ryan* represents a non-linear “procedure of power [that] circulates in a manner at once continuous, uninterrupted, adapted and individualized” (Foucault 1980: 120).

### **III. Woman of Legal Discourse**

Carol Smart’s feminist legal theory draws on Foucauldian notions of Power/Knowledge and adds the crucial component of gender to the analysis. Smart

(1995) argues that women are perceived in relation to “gendered subject positions which legal discourse brings into being” (192). Discourse is constructed through language and contributes to the knowledge production of the subjects it constructs. Smart argues that there is a specifically gendered aspect to this process (1995: 195). Additionally, Smart argues that the law sets itself above other knowledges to establish the “truth” of events, and in doing so continually enacts social meaning (Smart 1995: 191).

Seeing law as a gendering strategy is helpful in analyzing the criminalization and victimization of abused women who are charged with self-defensive violence against their abusive partners; the abused woman as a particular type of woman is brought into being through the discursive practices and methods of the law. By looking at the discursive nature of law and the Power/Knowledge relations that work to enact it in the case of an abused woman charged with self-defensive violence (here Doucet in *R v. Ryan*), we see how a battered woman is constructed as either victim or criminal through gendered narratives. In this research, I have examined how discourses of emphasized femininity, psychology, and legal credibility were used to construct Doucet as Victim/Criminal: through an RCMP sting operation that targeted her, relentless appeals of her acquittals by the crown and stigmatizing language used to frame her by both the crown and defence throughout her trial. In addition, I have questioned the negative media attention following the Supreme Court of Canada decision to overturn her acquittals as a contribution to Doucet’s criminalization through the Victim/Criminal binary.

#### **IV. Qualitative Research**

In regards to research, the word ‘qualitative’ implies an emphasis on the qualities of processes and meanings. Qualitative research incorporates a range of interconnected

interpretive practices to get the best understanding of the subject matter (Denzin & Lincoln 2005: 4-10). Qualitative research has the goal of “making sense of, and interpreting, phenomena in terms of the meanings people bring to them,” (Denzin & Lincoln 2005: 3). This qualitative research analyzes “observable events through textual data” (Ponterotto & Grieger 2007: 411). My analysis of *R v Ryan* examines the legal and social meanings that are attached to the dichotomous construction of women (here Doucet) as Victim/Criminal in legal discourse.

Ponterotto & Grieger (2007) argue that qualitative research generally falls within two research approaches (410). A constructivist standpoint maintains that the social world is made up of multiple, equally valid and socially constructed realities and aims to uncover embedded meaning in words and text. A critical standpoint maintains that reality is shaped by political, social and economic factors and takes on creating transformation through challenging discourse (Ponterotto & Grieger 2007: 410). The research of this thesis is a blend of these two approaches. The thesis’ research approach maintains that reality is shaped by socially constructed factors such as gender, race and class and aims to uncover the embedded meanings in the discourses that frame Doucet in *R v Ryan*.

## **V. Critical Language Study**

Norman Fairclough, an English sociolinguist, describes critical language study as examining the “connection between language and power” (2001: 1). He argues that language is significant in the production, maintenance and change of social relations of power because of the ideologies and assumptions embedded in the forms of language we use (Fairclough 2001: 2). Critical language study is a branch of linguistics, the study of human language (5). Fairclough argues “linguistic phenomena are social in the sense that

whenever people speak or listen or write or read, they do so in ways which are determined socially and have social effects” (19). Language is the medium in which Doucet is constructed through legal discourse, and therefore of great importance to this thesis. Through critical discourse analysis I analyze the language used to construct Doucet through the discourses of emphasized femininity, psychology and legal credibility and how they are used to construct Doucet through a dichotomous label of Victim/Criminal.

## **VII. Discourse Analysis of Spoken Text**

Critical discourse analysis is an approach to language study used to show that social structures are present and reproduced in discourse (Fairclough 2001: 9). Fairclough (2001) argues that language is a part of society, a social process and a socially conditioned practice (9-11). Critical discourse analysis examines the relationship between discourse, power, dominance and social inequality (van Dijk 1993: 249).

Dutch critical discourse analyst Teun van Dijk, (1993) argues that critical discourse analysis is a political research methodology (249). He writes, “critical discourse analysts should take an explicit socio-political stance [because] their hope, if occasionally illusory, is change through critical understanding” (252). The aim of critical discourse analysis is to look for the role of discourse in the production, reproduction and challenge of dominance by examining the structures and strategies that play a role in the “support, enactment, representation, legitimation, denial, mitigation and concealment of dominance” (250).

Discourse analysis is most often done through written text. However, Fairclough (2001) defines spoken text as “what is said in a piece of spoken discourse” (20). This

thesis will provide a critical discourse analysis of the audio recordings of *R v Ryan* in ways that add to the feminist, socio-legal literature. As far as I know, a feminist audio analysis has not been done; so one of the aims of this thesis is to add legitimacy to discourse analysis done on spoken text. In this way, the thesis will investigate how both the crown and defence contribute to knowledge produced about Doucet, as well as her resistance strategies through out the trial.

According to Fairclough, critical discourse analysis comprises three distinct parts: a description of the (spoken) text, an interpretation of the relationship between the text and its social interaction and an explanation of connections between the social interaction and social context (2001: 20-22). My analysis will do this for each of the narratives through which the crown and defence construct Doucet as criminal and victim: through the discourses of emphasized femininity, Battered Woman's Syndrome psychology and legal credibility. I also examine Doucet's resistance to the narratives.

Feminist critical discourse analysis has the specific aims of examining the complex workings of power and ideology in sustaining a (hierarchically) gendered social order, and identifying the subtle ways in which "taken for granted social assumptions and power relations are discursively produced, perpetuated, negotiated and challenged" (Lazar 2005: 2). The focus is on how gender ideology and gendered relations of power are (re)produced, negotiated and contested in representations of social practices, social relationships and social identities (11). The thesis is a feminist critical discourse analysis focusing on the spoken legal discourse through which Doucet is constructed in a Victim/Criminal binary and how these dichotomous gendered narratives are (re)produced, negotiated and contested.

## **VII. Engaging with *R v Ryan***

I took several steps to engage with the data from *R v. Ryan*. I chose to focus on the Supreme Court of Nova Scotia ruling; my data consisted of an audio recording of the six-day trial, the crown and defence factums and the written judicial decision. I went through the steps of critical discourse analysis—description, interpretation and explanation—for each source of data.

Fairclough, (2001) writes that codes help the reader make sense of the text (21). In reading and listening to the data from *R v Ryan*, I used four codes: emphasized femininity, psychological discourses and legal credibility and resistance to gender/victim scripts. According to Richards and Morse, “coding is about linking: it leads [the researcher] from the data to the idea,” (137 in Roth 2006: 9). In this sense, my codes were developed through patterns that I saw emerge in *R v Ryan*; I considered the frequency that the patterns appeared and the how they surfaced in relation to other interactions in the data. For example, codes of emphasized femininity, “Battered Woman’s Syndrome” psychological discourse and legal credibility were often present in cyclical conversations by the crown and defence that emerged from classifying and categorizing Doucet as either victim or criminal. The codes that I chose are reflected in the literature on abused women charged with self-defensive violence, and can be used to highlight a gap in the literature that this research aims to address. Doucet was subject to multiple narratives of appropriate victimization, and contributed to her legal narrative by resisting the same gendered scripts that were used as codes in the analysis process of this thesis.

For the first step of critical discourse analysis, when I did a preliminary read and listened to the trial data from *R v Ryan*, I used these codes as a point of reference to gain a

general sense of the “story” that was being told about Doucet and the case. I looked more specifically at the discourses surrounding the codes during my second review of the data, the interpretation stage of critical discourse analysis. During this stage I looked at the relationship between the codes and the interactions of the individuals present. During the third stage, I pulled connections between the codes and their social meanings.

As the examination evolved through the three stages of critical discourse analysis, I was able to gain a clear sense of the manifestations of victimization and criminalization discourses that were applied to Doucet, and specific acts of resistance to gender scripts. Through several reviews of the data, I was able to expand my analysis of *R v Ryan*. I was able to see the multiple ways that Doucet was constructed through a Victim/Criminal binary, specifically through discourses of her emphasized femininity, her psychological state and her legal credibility.

### **VIII. Reflexivity and Methodological Concerns**

Reflexivity refers to the interactional relationship between the data/researched and the researcher and the process of making visible this relationship (Speer 2002: 783, Hurd 1998: 201). Because the researcher gains access to the language, meanings, opinions, values and conceptual worlds of the researched, there is potential for the researcher to impose their own analytic categories and concepts onto the data and conclusions (784). Tracy Hurd (1998) argues that reflexivity is important in feminist research: “it deconstructs the values, processes and data of a research project” (202). Further, it facilitates a more complex and layered understanding of both the data and the research project (201).

As a feminist, socio-legal project, one potential limitation in this research methodology is the possibility of bias. Because critical discourse analysis is primarily a *political* research methodology, van Dijk (1993) maintains that it is important to recognize this position from the start (249). Lazar (2005) writes that “critical feminist research cannot and does not pretend to adopt a neutral stance, in fact, it makes its biases part of its argument” (6). Because this project is a feminist, critical analysis of legal discourse, the focus is on how gender ideology and gendered relations of power are (re)produced, negotiated and contested in social representations, practices and relationships. Acknowledging this framework from the start increases the validity of the thesis project.

An additional limitation of the thesis is that it is focused on only the legal material from one court decision in one case. This means that the analysis is of *R v Ryan* only and cannot claim generalizations about effects on other cases or other women who are constructed as Victim/Criminal in problematic ways through legal discourse. A future project may analyze all of the court decisions from *R v Ryan*, particularly the Supreme Court of Canada decision that overturns Doucet’s acquittal<sup>4</sup> or the discourses of emphasized femininity, psychology and legal credibility across several Canadian cases. Future research could additionally look at the media reactions and interpret the public perception of the way Doucet is framed. Recognizing and understanding the limitations of this research points to future areas of research.

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<sup>4</sup> In January 2013, the Supreme Court of Canada overturned the Nova Scotia Court of Appeal acquittal of Doucet. In a rare decision, they ordered a stay of proceedings on the case, so Doucet will not have to stand another trial (CBC News Jan 14).

#### **CHAPTER 4-DISCURSIVE FINDINGS on *R v RYAN***

A critical discourse analysis of *R v Ryan* was performed and its findings make up the first half of this chapter. It was discovered that Doucet was constructed through the binary construct of Victim/Criminal as the crown and defence debated her emphasized femininity, Battered Woman Syndrome psychological discourse and legal credibility throughout the trial *R v Ryan*. These discourses are gendered and linked through the narratives of the binary construct of Victim/Criminal that women charged with self-defensive violence are subject to. Further, it was seen that the normative gender scripts of emphasized femininity—stereotypical notions of a true “woman,” such as passivity and domesticity—shaped the violence within Doucet and Ryan’s marriage, and overlap with the discourses used to structure her trial. In the course of the proceedings, Doucet adds to the narrative of her emphasized femininity and legal credibility by resisting these gender scripts, contributing to the discourse of abused women charged with self-defensive violence. This chapter will present the legal narratives and an interpretation of them, including an explanation of how these discourses correspond to the violence in Doucet’s marriage, and a description of Doucet’s resistance to the gender scripts. Then the chapter will map the discursive findings of *R v Ryan* onto the scholarly discussion of abused women charged with self-defensive violence. The findings of *R v Ryan* will be discussed in relation to the literature and theoretical framework and show that Doucet’s emphasized femininity, Battered Woman’s Syndrome psychological discourse and legal credibility were discursively produced through the binary construct of victim/criminal. The legal narrative and the gendered discourses were produced by the crown and defence, and reflected in the Nova Scotia Court of Appeal judicial decision. The chapter will conclude

the thesis with a discussion on the implications of these findings with regard to the academic literature on abused women charged with self-defensive violence.

### **I. Evidence and Analysis of Emphasized Femininity in the Legal Narrative of *R v Ryan***

The defence makes Doucet's emphasized femininity a focus throughout *R v Ryan*. Gender scripts relying on emphasized femininity are used to "diagnose" Doucet through a psychological definition of the "Battered Woman's Syndrome" and to strengthen Doucet's legal credibility by showing that she is an upstanding wife and mother worthy of the sympathies of the court. Evidence in *R v Ryan* shows that Doucet performs dominant norms of femininity: she is a "positive," contributing member of society (as defined by her educational background, employment history and involvement in extra-curricular activities) and she is a loyal, caring wife and mother. These normative scripts of femininity show that Doucet is a particular *type* of woman, and her femininity is emphasized because it is implicitly both white and middle-class. This becomes a focus in her trial, because evidence shows that the Criminal Justice System treats racialized and poor women with fewer leniencies (Belknap 2007: 152).

Doucet's counsel demonstrates that she is a positive contributing member of society, having achieved two degrees, a strong employment history, a role in several leadership retreats and a close relationship with her friends and family (*R v Ryan* 2009; December 7 10:13). Feminist Criminologist Amanda Burgess-Proctor argues that a marker of third-wave feminism is the examination of gender in the context of other locations of privilege or oppression (35). It is important to note that Doucet is privileged on multiple levels and had resources to obtain an education, gain employment and navigate the legal system with a prestigious defence attorney after her arrest. This fits a

normative gender script of white, middle-class femininity in the eyes of the law (Faith 2010: 108, Miller 2005: 3) and contributed to Doucet's legal acquittal. Her education and strong relationship with her upper-middle class family is significant to the judicial decision and noted by Justice Farrar at ¶13:

She is a university graduate with a B.A. and B.E.d from the Universite College de St. Anne's...the accused is one of nine children, she has six sisters and two brothers. She described her family as close-knit, however, following her marriage to Mr. Ryan, the relationship with her parents and siblings became strained (*R v Ryan* 2010: 5).

In addition to her strong family and educational background, the defence demonstrated that Doucet was involved in the community—until she married Ryan. When the defence asks Doucet about her involvement in extra curricular activities and the community, she answers: “Up until 2002 I was very involved in extra-curricular activities, but after that I was no longer permitted to participate in anything I didn't get paid for” (*R v Ryan* 2009; December 7 1:52). The rule over a woman's daily activities, interests and whom they interact with is a coercive way for abusers to control their partners; It is another way that men (or any abusive partner) are violent towards women in intimate relationships (Statistics Canada 2011: 14).

The defence aims to highlight Doucet's emphasized femininity in contrast to her husband's “powerful” masculinity to show a physical difference in power between them. By way of illustration, ¶ 8 of the Defence factum (a written submission of the defence's position) argument and evidence to be presented at trial, highlights that Doucet is 5'3 inches and 115 pounds, in comparison to Ryan's 230 pound, 6'3 frame. This shows that Doucet was physically vulnerable, which strengthens Doucet's victim status (Maass 2009, West & Zimmerman 2008 and Nelson 2006).

There is a concerted effort by the defence to show that Doucet was a proper wife—an important component to her emphasized femininity—throughout her marriage to Ryan, as evidenced by her loyalty, compliancy and altruistic nature. At the trial during Doucet’s testimony, her counsel asks her:

Defence: Did you ever think about leaving your husband?

Doucet: I did not, no.

Defence: Why?

Doucet: Because I felt sorry for my husband...he said he needed a family...I thought if I showed him love, compassion, understanding, respect...he would become a better person.

Defence: What did you decide to do?

Doucet: I decided to stay and help him...I thought I had the capability of turning Mr. Ryan into a good person (*R v Ryan* 2009; December 7 10:42).

In addition, she is asked:

Defence: Why didn’t you leave him?

Doucet: I always thought things would get better and I had married him and was going to stick by him...I was married, and I was going to stay married and was going to support him (*R v Ryan* 2009; December 7 10:45).

This frames Doucet as a proper wife, a role that the courts tend to sympathize with (Faith 2010: 95-96). The judicial decision suggests that this legal strategy worked. The Justice notes at ¶ 19, “the accused thought things would get better over time” and at ¶ 55: “she indicated that she felt shame and embarrassment. She blamed herself in the sense that she was not somehow fulfilling the expectations of a spouse” (*R v Ryan* 2010: 5).

In addition, the judicial decision points out the concern Doucet had for her daughter, highlighting the fact that Nicole’s actions were an attempt to protect her daughter when “fearing for their safety” (*R v Ryan* 2010: 16). This is even highlighted as the motive for Doucet’s crime at ¶ 40 of the factum of the appellant, a written submission

of the crown's position, argument and evidence to be presented at trial: "I want my daughter safe. That is what I'm begging for" (*R v Ryan* 2010: 22).

Aiming to refute the narrative that casts Doucet as a "good" woman, the crown works hard to suggest that Doucet does not conform to "perfect victim" scripts. During cross examination, the crown asks Doucet multiple times about whether she ever thought of leaving Ryan, and suggests that it is unbelievable that she did not, as any rational person would. This shows a complete non-understanding of the way violence against women and power operate in relationships. When Doucet replies that she observed her students change their behaviour when showed attention and love—something she thought she could accomplish with Ryan—the crown counsel replies "those students were not abusing you as you claim Michael Ryan was doing [to you]," (*R v Ryan* 2009; December 8 10:21). The fact that Doucet argues that she was willing to stand by Ryan in order to "help" him suggests that Doucet is a loving, compassionate wife, a traditional component of the gendered victim script. In response, the crown suggests that Doucet was not "as fit a mother as suggested" by arguing that her daughter was returned to Ryan's care after her arrest instead of being placed in the care of social services (*R v Ryan* 2009; December 8 10:43). This suggests that Ryan's fatherhood (despite her accusations of his abuse) is more legitimate than Doucet's motherhood, and implies a lack of guilt on Ryan's part. This further contributes to the narrative of Doucet's criminalization by casting her as a "bad" mother.

Female victims of male violence that conform to a stereotypical set of "feminine" characteristics, are treated with more leniency than women perceived as "hardened criminals"—who are viewed as unkempt, unrepentant and unfeminine—by police,

prosecutors and judges (Faith 2010, Wesely 2006 & Smart 1995). Women who are seen as good wives and mothers are perceived as deserving and worthy of protection and compassion from the criminal justice system (Comack & Balfour 2004: 63). Doucet's counsel presented her as a "good" woman: a loyal, altruistic wife and mother and a worthy, credible "victim" deserving of protection and leniency, as a legal strategy to secure her acquittal. However, the use of these gender scripts can be problematic when her experiences are not fully accounted for—such as her need to take action against threats of violence against her and her daughter after the authorities continually turned her away—and instead are placed into dichotomous gendered labels of Victim/Criminal.

In contrast, the crown challenged that Doucet has these qualities and worked hard to present her as a vindictive, disgruntled wife and thus non-credible as a victim of domestic violence or a legal witness. Because violence is not traditionally seen as a naturally feminine behaviour and socialization patterns and institutions forbid women's expression of violence (Wesely 2006: 314), the crown pushes the notion that Doucet is a manipulative criminal who tricked the courts into believing she was a victim of domestic violence in order to carry out a murder. This is most apparent through the crown's argument around the timing of Doucet's arrest; she was arrested three days prior to a child custody hearing between her and Ryan. The crown suggests "the custody hearing was the reason [Doucet] wanted Michael Ryan dead," (*R v Ryan* 2009; December 8 2:23). Because the custody of their daughter had been a principle battle between Doucet and Ryan, the crown aims to present Doucet as an evil, cunning wife who planned the deliberate murder of Ryan before the hearing could take place. Doucet was constructed within narratives of a vindictive woman "who not only ruptures the proverbial

characterizations of normal crime, but also the female gender script of the nurturing and supportive wife and mother” (Comack & Balfour 2004: 72). This adds to a stereotype that abused women charged with self-defensive violence are using an “abuse excuse” and contributes specifically to Doucet’s criminalization by discursively producing her as a manipulative criminal and “bad woman.”

## **II. Evidence and Analysis of Battered Woman’s Syndrome Psychological Discourse in the Legal Narrative of *R v Ryan***

Discourses of Battered Woman’s Syndrome psychology are explicit in *R v Ryan*. Significant time is spent by both the defence and crown examining Doucet’s psychological state through explicit details of the abuse she suffered throughout her relationship with Ryan, an assessment of Doucet’s emotional characteristics and expert testimony debating a diagnosis of the “Battered Woman’s Syndrome.”

The defence and crown tell the story of Doucet’s abuse quite differently. At ¶ 54 of the Factum of the Defence, the counsel writes, “the respondent Nicole Patricia Ryan was a victim of physical, psychological and sexual abuse” (*R v Ryan* 2010: 7). In contrast, at ¶ 37 in the Factum of the Appellant, the crown writes, “the respondent testified at trial. She spoke of Mr. Ryan’s temper tantrums and how he would not tolerate her disagreeing with him in public. She testified that Mr. Ryan would sometimes pin her up against the wall and squeeze her throat but that he had never beaten her” (*R v Ryan* 2010: 21). The Factums of the Defence and Appellant foreshadow the way that Doucet’s abuse is characterized throughout the trial.

The defence examines the details of Doucet’s relationship and the psychological effect it had on her in depth and throughout *R v Ryan*. In the audio recording of trial, the defence asks Doucet to explain the first time she experienced Ryan’s temper:

Defence: What happened when you went inside the house?

Doucet: Mike started yelling and screaming because I had not agreed with him, I agreed with the neighbour and that was not normal for a married couple. He pushed me up against the wall and he squeezed my neck with his hands and then punched a hole in the wall beside my head.

Defence: What affect did that have on you?

Doucet: You just stand there and you just freeze. You learn to agree with your husband and keep your mouth shut (*R v Ryan* 2009; December 7 10:28).

This passage highlights the gender scripts that shaped Doucet and Ryan's marriage; good wives agree with their husbands and do not challenge their authority, especially in front of others. The defence continually highlights how Doucet conformed to traditional feminine gender scripts of proper wife and motherhood within her marriage: Doucet "learn[ed] to agree with [her] husband and keep [her] mouth shut," demonstrating a dutiful, "proper" wife (*R v Ryan* 2009; December 7 10:28).

To gauge the severity of the violence in Doucet's marriage, the defence asks Doucet to explain when her relationship took a turn for the worse:

Defence: How was your time with Michael from 2002 onwards?

Doucet: During those years the explosions and outbursts occurred more frequently. There were 1 to 2 per week, but when he was home you could expect one a day. He said he would take Aimee and I and kill us and bury us at the fork in the road behind our house where no one would find us. He said he would dig a 6-foot trench and then throw garbage on top and no one would notice or come looking (*R v Ryan* 2009; December 7 11:33).

The defence inquired into Doucet's coping strategies for violence and threats, highlighting that she always agreed with Ryan, stayed quiet, became passive, and isolated herself. The defence does this to highlight how Doucet fits the gender script of the proper victim, a woman worthy and deserving of leniency from the courts. In direct contrast, the crown aimed to minimize the abuse by suggesting that Doucet never told anyone of Ryan's "inappropriate behaviour" (*R v Ryan* 2009; December 8 9:42). The crown argued

that Doucet had no difficulty speaking to her doctors about medical issues, but never disclosed to them any instances of “marital problems in her relationship.” In particular, the crown suggested that Doucet denied any allegations of physical abuse to her therapist, “meaning that [she] had never been beaten black and blue” (*R v Ryan* 2009; December 8 9:46). This perpetuates a very dangerous stereotype that the only type of violence against women is extreme. Research shows that violence in intimate relationships takes on many forms. For example, emotional, sexual, financial and coercive control through stalking, threats and intimidation are equally, if not more, damaging than physical assault (DeKeseredy 2011, DeKeseredy & MacLeod 1997, Dobash & Dobash 1979).

Significant time and resources throughout *R v Ryan* are dedicated to examining Doucet’s psychological state, particularly in relation to the signs and symptoms of the “Battered Woman’s Syndrome.” The factum of the defence reports that “the respondent Nicole Patricia Ryan felt worthless, helpless and became lost and isolated...[she] felt that she was trapped 24 hours a day” and that “Michael Ryan’s actions towards the respondent Nicole Patricia Ryan made her feel worthless, hopeless and desperate” (*R v Ryan* 2010: 5). At ¶ 54, the defence states that “Dr. Stephen Hucker, a forensic psychiatrist, testified to the medical opinion that the respondent Nicole Patricia Ryan was a victim of physical, psychological and sexual abuse” (*R v Ryan* 2010: 7). In relation to the defence testimony of Dr. Hucker, the factum of the appellant states that “In Dr. Hucker’s view, the respondent fit a pattern which would lead her to perceive that there was no way out other than the course which she chose to take. Dr. Hucker’s opinion was that the respondent had the characteristics of a woman in a chronically abusive relationship” (*R v Ryan* 2010: 22). However, the crown introduced an additional expert witness at trial; at ¶ 43 of the

appellant factum it is noted “Dr. David Mulhall, a clinical psychiatrist, testified...that the respondent [in a one-hour long court ordered psychological assessment] did not disclose any issues of physical abuse or sexual abuse, nor did she mention being fearful of her husband” (*R v Ryan* 2010: 23).

During the examination of Dr. Hucker, the defence demonstrates that his assessment of Doucet was done for legal purposes; specifically to address the defence of duress and the possibility of a diagnosis of the Battered Woman’s Syndrome<sup>5</sup> (*R v Ryan* 2009; December 17 11:23). When questioned by the defence, Dr. Hucker gives the psychiatric opinion that “Nicole’s account suggests she fulfills the characteristics of Battered Woman’s Syndrome...she has the characteristics of a woman who has been through a chronically abusive relationship, and [this has] given rise to Post-Traumatic Stress Disorder and personality traits such as avoidance and dependence caused by abuse, the Battered Woman’s Syndrome can be applied legally” (*R v Ryan* 2009; December 17 2:14). Dr. Hucker highlights that the interpretation of Doucet’s account of her relationship with Ryan was “consistent and followed patterns of domestic violence victims” (*R v Ryan* 2009; December 17 2:16).

The crown tries to delegitimize Dr. Hucker’s by arguing that Doucet did not fit the description of a “battered woman” as outlined in Walker’s “The Battered Woman Syndrome”:

Crown: Dr. Lenore Walker wrote the guiding text. I appreciate that not all battered spouses fit the prototype.

Dr. Hucker: That’s partly why I don’t like the term.

Crown: So, you would be familiar with the cycle of violence as Walker describes it.

Dr. Hucker: Yes.

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<sup>5</sup> For a detailed discussion of the “Battered Woman’s Syndrome,” see Ch. 2.

Crown: When you first met with Nicole, there was nothing cyclical about what she described to you.

Dr. Hucker: Yes, but that doesn't mean her experiences of violence weren't real.

Crown: I hope you don't think I was saying that.

Dr. Hucker: One could think you were implying that.

Crown: It is inconsistent with the symptomology of other battered spouses.

Dr. Hucker: The issue of credibility is up to his Lordship, but the account she gave me was not inconsistent.

Crown: There were a lot of red flags in Nicole Doucet's account.

Dr. Hucker: Not inconsistencies. It [Doucet's varied and vague accounts of the violence she experienced] was a defensive mechanism common to abused spouses (*R v Ryan* 2009; December 17 3:41).

The Justice accepted the evidence given to show that Doucet was a "battered woman." At paragraphs 75-76 of the judicial decision he states:

Dr. Hucker, in giving his testimony, also elaborated on the characteristics of battered woman's syndrome. Although he did not particularly like that terminology...he described a situation where the abuser is in control, they want to deprive the victim of making any decisions and [sic] the person to conform. They are jealous of the victim being in contact with others, and the victim is required to be subservient. Often the abuse is cyclical in the sense that there are outbursts of violence (psychological or physical) and then periods of calm. From the victim's point of view, they find a way for excusing the behaviour. They feel sorry for the abuser and they feel that if they remain in the relationship things will change (*R v Ryan* 2010: 13).

This description of abused women conforms to gender stereotypes that require abused women to be passive and feel guilt about taking action against their abuser. Doucet's victimization is constructed within this narrative by the defence, and the court sympathizes with this and grants her acquittal. At ¶ 86 the Justice notes, "I am satisfied that Ms. Ryan had the characteristics of an abused person as set out in Dr. Hucker's report;" ¶ 152, "I find that Ms. Ryan's fear of Mr. Ryan was the sole reason for her actions;" and at ¶ 186, "As a result [of the evidence presented outlining the violence

Doucet experienced at the hands of Ryan], I find Ms. Ryan not guilty of the offence charged” (*R v Ryan* 2010: 15-26).

*R v Ryan* exemplifies feminist and socio-legal concerns, discussed in Chapter 2, about the concerns of relying on psychological discourses in criminal legal proceedings. Research has shown that the use of psychological discourses such as the Battered Woman’s Syndrome creates a stereotype of the authentic battered woman. This is demonstrated when the crown calls into question both the authenticity of Doucet’s experiences of violence in relation to the clinical diagnostic criteria of Battered Woman’s Syndrome, and the credibility of the psychiatric examinations of her done by Dr. Hucker. Psychological discourses of the “battered woman” rely on gender scripts that are not only enforced in the courts, but written into psychiatric diagnostic literature. This is significant because, as Smart (1995) argues, scientific discourses—like psychology—are seen as truth and fact in the law, meaning they are perceived as reality and discount other experiences (191). Throughout the trial, the defence and crown debate whether Doucet’s experience matches Battered Woman’s Syndrome diagnostic criteria enough—for example, passiveness and learned helplessness—to warrant her punishment. Further, they call on expert witness testimony in the field of psychiatry, a practice which has been shown to individualize, medicalize and de-politicize women’s experiences of violence in intimate relationships (Comack 2002: 281).

There is no room to acknowledge that Doucet is a social actor with agency, and that often times survivors of violence act out their agency through violent resistance to their abusers (Miller 2007: 23-27). The overuse of psychological discourse in cases where abused women fight back against their abusive male partners has unintended

consequences that are seen throughout *R v Ryan*. Doucet's psychological state is up for debate between the crown and defence and seen as the *only* reason for her actions, when the reality of her lived experience of violence is much more complex, involving a real, direct threat to her and her daughter's lives by a man who had been physically, emotionally and sexually abusive to her for the previous fourteen years. Doucet was subject to the cycle of violence and testified that she thought her husband needed help and could get better with her love and support (*R v Ryan* 2009; December 7 10:42). When she realized she needed to leave for her own safety, and to protect her daughter, she tried to enlist the help of the authorities on twenty-one occasions, only to be turned away from a police force that "doesn't get involved in domestic disputes" (*R v Ryan* 2010: 6). The gender scripts of "victim" and "criminal" are not sufficient in explaining the experiences of Doucet or other abused women: missing are the intersections in which women experience violence, (race, status, class, occupation) the way that violence is perceived by the criminal justice system, and women's agency in the choice to use violent resistance.

The Supreme Court of Canada's decision to overturn Doucet's acquittal is the final word on *R v Ryan*. The acquittal was overturned based on the reasoning that duress was not an appropriate defence for counseling to commit murder because Doucet was not under direct threat *by another party* to commit the offence (*R v Ryan* 2013: 2). However, the Supreme Court of Canada issued a stay of proceedings because the crown changed its position on the law of duress between the trial and appeal process, "raising a serious risk that the consequences of decisions made during the conduct of Ryan's defence cannot be undone in the process of a new trial," (*R v Ryan* 2013: 2). This Supreme Court of Canada decision is significant because it accepted the facts from the Nova Scotia Court of Appeal

and Supreme Court of Nova Scotia that constructed Doucet through the Victim/Criminal binary construct through the use of Battered Woman's Syndrome psychological discourse.

Additionally, the overreliance on Battered Woman's Syndrome psychological discourse further codifies within the law a particular narrative of the abused woman, one that does not adequately describe the experiences of abused women in Canada. In particular, the narrative does not represent the experiences of abused women at the intersections of gender with race or class. This becomes relevant in Doucet's case as she exemplifies the characteristics of an ideal "victim," being white, middle-class and in many ways stereotypically feminine, however she was still criminalized through an RCMP sting operation, criminal charges and appeals of her acquittal to the Supreme Court of Canada. Further, she was re-criminalized through the negative media attention that followed the Supreme Court of Canada decision to overturn her acquittal. She is perceived in the media as a deceitful, manipulative wife who "got away" with counseling to commit the murder of her husband (McGuire 2013). The gender scripts that make up the Victim/Criminal binary that Doucet is constructed through become normative discourses through the legal process. The narrative of her case becomes a further codified experience of abused women charged with self-defensive violence, as well as the discourse used to classify the "right" kind of "victim." In this case, the right kind of victim is one who is white, middle-class and traditionally feminine. She qualifies through psychiatric diagnostic literature as suffering from the "Battered Woman's Syndrome" and is legally credible as a victim "deserving" of leniency from the Criminal Justice System. The negative media attention surrounding Doucet—particularly after the Supreme Court Decision—is significant as well: it contributes to her criminalization. Doucet is portrayed

as a manipulative, vengeful ex-wife who “tricked” the courts into acquitting her. Characterizations of the woman using the “abuse excuse” are gendered narratives that contribute to the Victim/Criminal binary. Doucet is categorized on both sides of this binary divide throughout *R v Ryan* and the subsequent media attention.

### **III. Evidence and Analysis of Legal Credibility in the Legal Narrative of *R v Ryan***

Gendered narratives of Doucet’s legal credibility are debated in *R v Ryan*. The defence argues that Doucet is a credible victim that had no avenue of escape and much of the crown’s arguments present evidence that aims to minimize Doucet’s legal credibility through discourses that present her as a manipulative wife using the “abuse excuse” to get away with murder. This is a gender script of a vengeful wife lying about abuse to get away with a crime.

In order to strengthen Doucet’s legal credibility, the defence gives evidence to support that she is a credible victim who had no option other than the decision she made to save herself and her daughter. Of particular focus is the fact that Doucet appealed to the authorities for help on several occasions, as noted in ¶ 46-48 of the defence factum; “The respondent Nicole Patricia Ryan called 911 and the RCMP on 9 occasions...The response of the RCMP was “we don’t get involved in Civil matters...The respondent Nicole Patricia Ryan sought help and spoke to Victim Services on 11 occasions” (*R v Ryan* 2010: 6). It is noted in the trial that Doucet asked for help not only from 911, the RCMP and Victim Services, but also from the Digby County Police, military police and a Nova Scotia crown attorney (*R v Ryan* 2009; December 7 10:12). The defence uses this evidence to prove that Doucet tried to use conventional avenues to ensure her safety and the safety of her daughter, but was turned away by the authorities meant to protect her, and, in fact, targeted by the RCMP in a sting operation meant to convict her. The defence

shows that Doucet was a deserving victim—and therefore legally credible—who appealed for help and was turned away. Justice Farrar notes this contradiction at ¶ 74 of the judicial decision: “it seems somewhat ironic the system which had failed to address the issues that Ms. Ryan had with her husband was only too eager to come to her aid and provide a solution when it would potentially result in her committing a criminal offence”; and again at ¶ 165, “It is ironic...that one of the agencies [Doucet] had appealed to, the police, was actually the avenue which presented itself to her to solve her problem” in an undercover RCMP sting operation (*R v Ryan* 2010: 13-25).

To further strengthen Doucet’s legal credibility, the defence counsel presents evidence to show the character of Michael Ryan as a batterer who regularly terrorized Doucet and their daughter (i.e. framing Ryan as non-credible). Ryan’s masculinity and aggressiveness is highlighted in comparison to Doucet’s femininity and need of protection in order to strengthen Doucet’s legal credibility. At ¶ 67 of the factum of the defence, he writes “the medical records which were introduced...indicate that Mr. Ryan as of 2002, had long standing issues with anger awareness and management” (*R v Ryan* 2010: 12). At trial, the defence introduces Nassim Hanna and Alan Green as witnesses who had altercations ranging from bar fights to road rage with Ryan in order to give evidence that Ryan is unstable and Doucet had reason to fear him. The Judge ruled in Doucet’s favour and states in the judicial decision “I have no difficulty in concluding that Michael Ryan was a manipulative, controlling and abusive husband, that sought at every turn to control the actions of his wife, be they social, familial or martial” (*R v Ryan*, 2010: 10).

In turn, the crown's strategy in *R v Ryan* is to make Doucet seem non-credible.

The crown does this in several ways. First, he suggests that Doucet and Ryan spent much of their relationship apart. In the Factum of the Appellant, he notes at ¶ 13,

During the next approximately 15 years, Mr. Ryan and the respondent occasionally lived together in Ontario, Alberta and Nova Scotia. They also spent a significant portion of time during this time living separately for reasons having to do with Mr. Ryan's career in the military and the respondent's desire to live close to her family (*R v Ryan* 2010: 4).

This makes it seem as though Doucet and Ryan rarely lived together; in reality, they only lived apart for short periods of time between 1992-1994 and 2002-2004 (*R v Ryan* 2009; December 8 9:41). The crown presents this evidence to support the claim that Doucet is using the "abuse excuse" to get away with trying to hire a hit man to kill her husband.

The crown suggests a motive for Doucet to counsel Ryan's murder at ¶ 40: "It was suggested to the Respondent on cross-examination that she had instructed [the undercover police officer] to kill her husband that weekend because she wanted him killed before her April 1<sup>st</sup> custody proceeding" (*R v Ryan* 2010: 22). The crown highlights at trial as well the timing of Doucet's arrest and suggests that the custody hearing is the reason she wanted Michael Ryan dead; Doucet replies that Ryan threatened to burn down the house with her and their daughter inside, and she believed him, and that was the reason she feared for their lives and counseled Ryan's murder. To further the argument that Doucet tried to hire a hit man to kill her abusive husband out of maliciousness, the crown suggests that Doucet became aware that "Mr. Ryan was having an affair with a younger woman," and presents this as an additional motive for wanting him killed (*R v Ryan* 2010: 5).

Lastly, the crown tries to delegitimize Doucet by providing testimony that she never disclosed abuse to her family doctor or counselor. ¶ 42-44 of the Factum of the Appellant, he writes:

The Respondent discussed stresses arising out of her marriage [in the context of emotional abuse,] but never disclosed any physical abuse, nor did she disclose any sexual abuse...the Respondent did not disclose to [her counselor] any incidents in which Mr. Ryan used guns or any other weapons...The respondent did not disclose to [Dr. Pottle, clinical psychiatrist for the crown] any issues of physical abuse or sexual abuse, nor did she mention being fearful of her husband....When Dr. Pottle asked the Respondent if she had been subjected to any physical abuse by her husband she said no. The Respondent also denied any history of sexual abuse (*R v Ryan* 2010: 23).

At trial, the crown raises the issue of child abuse identification and reporting in Doucet's job as a teacher. He says that because it is a legal responsibility to report any suspected instances of child abuse in her job as a teacher, she should have done the same with the abuse in her personal life. The crown aims to make Doucet seem non-credible by suggesting that she "never once told any doctors, friends or family about [her] marital problems," and explicitly suggests that if it were bad enough, she would have (*R v Ryan* 2009; December 8 9:35). This is a form of victim-blaming that criminalizes women survivors of abuse. The defence refutes these claims by explaining medical and psychological literature on the Battered Woman's Syndrome to refute these claims and introduces Dr. Hucker to explain that abused women often do not disclose due to shame, embarrassment and a sense of failure (*R v Ryan* 2010: 5).

The Justice decision gives little weight to the arguments that Doucet is not legally credible presented by the crown. He states at ¶ 148 "I have no difficulty in finding that Mr. Ryan was an abusive, manipulative individual. Further, I have no difficulty

determining that Ms. Ryan was justified in her fear of violence from him”; at ¶ 155 he writes: “A reasonable person in the circumstances of Ms. Ryan...would have acted in the same manner,” and at ¶ 161 “There was no other safe avenue of escape available to her” (*R v Ryan* 2010: 23-25). In relation to the flaws in the prosecution’s proposed motive and timing of Doucet’s arrest, The Justice states at ¶ 60:

The weakness in this argument is that it was the police who initiated the contact with Ms. Ryan not the other way around. It was they who controlled the timing of the encounter not Ms. Ryan. I am not satisfied that the timing of the offence had anything to do with the timing of the family court hearing. The urgency is more likely related to the threat Ms. Ryan perceived” (*R v Ryan* 2010: 11).

In terms of Doucet’s failure to report the abuse she suffered, the Justice writes in the decision “I place very little significance on her failure to report the incidents to other individuals or medical professionals. The experts that gave evidence in this proceeding testified that it was not unusual for a woman in situations such as Mrs. Ryan to feel inadequate, guilty and suppress the information that might later become indicative of abuse” (*R v Ryan* 2010: 10). Finally, The Justice notes at ¶ 166 of the judicial decision that “Ms. Ryan was compelled to take the action she did by normal human instincts and self-preservation. It would be inappropriate, under these circumstances, to attribute criminal conduct to her” (*R v Ryan* 2010: 26).

Doucet’s legal credibility is a major point of debate throughout *R v Ryan*.

Doucet’s credibility as a victim is a focus for the defence, as the crown aims to minimize her credibility and present her as a manipulative criminal hoping to take advantage of the legal system. Both of these narratives fall into a binary construct of Victim/Criminal and the gender scripts that inform them. Narratives of women as manipulative, vindictive ex-

wives inform the gendered criminalization of Doucet, while the defence argues that Doucet is a good wife and mother with unconditional devotion to her abusive husband and daughter. The story of Doucet's legal credibility is built upon these gender scripts and her victimization/criminalization.

The perception of legal credibility is an important part of trials, often contributing to the court's decision (Randall 2010: 398). The Justice agreed with the defence regarding Doucet's credibility and acquitted her on the charge of counseling to commit murder. Unfortunately, constructing women through discourses of emphasized femininity, Battered Woman psychological discourse and legal credibility (that the crown and defence used to place Doucet within the binary of Victim/Criminal) has drawbacks. Narratives used in court contribute to social discourses about abused women charged with self-defensive violence as manipulative criminals needing to prove themselves innocent or helpless victims worthy of sympathy and leniency. In *R v Ryan*, the crown argued that members of the Meteghan detachment of the RCMP "received information that [Doucet] was attempting to hire somebody to kill her husband," and presented the upcoming custody hearing between her and Ryan and Ryan's recent affair with a younger woman as motive for Doucet trying to have him killed (*R v Ryan* 2010: 16). The defence argued "Ms. Ryan attempted to use every avenue available to her to resolve the concerns she had about Mr. Ryan and, in particular, her concern that he would do harm to herself or her daughter," (*R v Ryan* 2010: 10). Gendered narratives of the deserving victim who did everything they could to "get help" and the vindictive wife using the "abuse excuse" are used to deny and imply guilt in *R v Ryan*. These gendered discourses create a binary construct of Victim/Criminal and do not adequately capture the experiences of violence in

Doucet's marriage. Women who are criminally charged with self-defensive violence are better understood through a "victimization-criminalization continuum" as the realities of their lived experiences with violence are more complex (Balfour 2008: 105). In *R v Ryan*, it was found that Doucet chose to defend herself (through counseling to commit the murder of her abusive husband) as a response to years of physical, emotional and sexual violence and this context is important in her decision to commit the crime.

#### **IV. Doucet's Resistance in The Legal Narrative of *R v Ryan***

As power is a continuous cycle, Doucet's acts of resistance, however small, are meaningful. Throughout *R v Ryan*, there are instances when Doucet challenges the Power/Knowledge that constructs her victimization and criminalization (Foucault 1980: 52).

Before Doucet's case even went to court, she challenged the narrative of the "typical victim." Whereas in the legal context, according to the Battered Women's Syndrome, a typical victim is one who has learned helplessness and would not typically call on the authorities for help. Doucet called the police twenty-one times in the three months leading up to her arrest. This shows that she took initiative to protect herself with the police and reported her experiences with domestic violence, something that it is estimated women do in less than one-quarter of cases in Canada (Statistics Canada 2011: 8).

An additional act of resistance by Doucet was her decision to take her case to trial. Doucet came from a privileged middle-class background and had access to the resources to afford a good attorney, which many survivors of domestic violence cannot afford, and she was able to have her case heard through all levels of court in Canada. Doucet's class

is significant, as research shows that prosecutors' charging decisions are often negatively affected and women are criminalized by the intersections of their race, class, sexual orientation and immigration status (Worall, Ross & McCord 2006: 475-477). Doucet fits the narrative of the deserving victim—white, upper-class, educated and a good wife and mother, however, she was criminalized through an RCMP sting operation that targeted her after multiple pleas for help and appeals of her acquittal to the Supreme Court of Canada.

At trial, there were multiple times when Doucet insisted on being called Nicole Doucet rather than Nicole Ryan. When asked to state her name she replied “Nicole Patricia Doucet” in an effort to resist being tied to her previous husband. The crown asks Doucet “do you prefer to be addressed as Mrs. Ryan at this stage of the game?” and she replies, “My name is Nicole Doucet” (*R v Ryan* 2009; December 8 9:31). Throughout the entire case, Doucet is constantly referred to as Nicole Ryan, Mrs. Ryan and Ms. Ryan by the crown and defence counsel as well as the Judge. It was a significant challenge to the legal discourse for Doucet to reiterate multiple times that she goes by her family name.

Doucet's acts of resistance are significant in *R v Ryan*. They demonstrate that survivors of domestic violence do not fit the criteria of a typical victim. In this case, Doucet has shown resistance to the discourses used to frame her victimization and criminalization: her stereotypical femininity, Battered Woman's Syndrome psychological discourse and legal credibility, as well as the links between these discourses. The evidence shows that Doucet rejected the narrative of the typical victim by phoning the authorities for help and protection, pleading not guilty and insisting on being called Doucet rather than Ryan. As well, she rejected the narrative by testifying to her

experiences that did not always fall in line with these discourses. For example, she rejected the discourse of stereotypical femininity that she was framed within by the crown by testifying that it was her who did all the home repairs, including drywall, which was unbelievable to the crown. Doucet's acts of resistance contribute to the legal narrative that she is framed within and the Power/Knowledge of women charged with self-defensive violence. Her resistance is a manifestation of power, and shows how she refused to be categorized solely as a Victim. Her resistance is interesting to note, because Doucet does conform to many of the dominant gender scripts of victimization, which informed her acquittal. For example, she was stereotypically feminine (a good wife and mother) and experts gave testimony that she fit the characteristics of a woman with Post-traumatic stress from domestic violence and the Battered Woman's Syndrome. The several discourses contributing to Doucet's legal narrative (from actors within the legal system and expert witnesses, but also herself) provides an example of Foucault's description of the web of power. Faith (2010) argues that acts of resistance by women survivors of violence show that "the woman who attacks her abuser is no longer acting out of passive acquiescence to powerlessness, but out of anger, instinct, survival and belief that the abuse is not her fault" (108). This is important in *R v Ryan* because Doucet appealed to the authorities on many occasions to help her with the violence she was facing and was turned away. She testified that after Ryan threatened her and their daughter, she believed it was he or they and took the steps necessary to save their lives (*R v Ryan*; December 7 2:23). This is an example of the "victimization-criminalization continuum," as it shows that Doucet does not fully fall into the category of "Victim" or "Criminal" (Balfour 2008: 105).

As seen throughout the discursive findings of *R v Ryan*, the crown and defence use the discourses of stereotypical femininity, Battered Woman's Syndrome psychological discourse and legal credibility to categorize Doucet within the binary construct of Victim/Criminal. Doucet's resistance to these gendered narratives—such as her non-conformity to all stereotypically feminine traits and her insistence on counseling Ryan's murder as a last resort—show that women charged with self-defensive violence are better represented through a “victimization-criminalization continuum,” (Balfour 2008: 105). This chapter has presented these legal narratives, an interpretation of the findings, and a description of Doucet's resistance to the gender scripts used to frame her throughout the case.

#### **V. Contradicting Discourses: Power/Knowledge and the Victimization/Criminalization of Nicole Doucet**

Smart (1995) argues that the law operates as a discursive strategy, and is a specific mode of deploying power, knowledge and truth, and that this mode is expressly gendered. She says that “we need to shift our understanding of law(s) away from the concept of it being an institution, towards the idea of law as a discourse, which is in turn, a significantly powerful discourse because of its situation in the hierarchy of knowledges and its power to subjugate other discourses” (8). This is because law has been constructed as a judgment of the truth; deployment of power occurs when knowledge production can also make a claim to truth (72). Further, Smart argues that law must be understood “both to participate in the construction of meanings and subjectivities and to do so within the terms of a gendered culture” because the law is a gendering strategy (78, 191). In this sense, the law works as a process of producing fixed gendered identities. When “Woman” comes into contact with the law she argues, she is subject to discursive construction in

specific ways. She is produced within the narrative of her experience and her subsequent criminalization, in addition to being produced in counter-distinction to man (193). This means that not only is she discursively produced through her criminalization, but that this involves a distinction from her “natural” starting place as a woman and the characteristics that she is expected to follow. Women who commit violent offences (typically seen as unfeminine) are criminalized for both their illegal acts and for straying from “feminine” behaviours: women are supposed to be cooperative, undisruptive and good. In *R v Ryan*, Doucet is constructed as a victim by the defence in trial and criminalized through the crown and subsequent negative media attention that deems her an unrepentant criminal. Both of these subject positions, victim and criminal, become fixed gendered identities through the legal process and contribute to the Power/Knowledge of women who are criminally charged for participating in self-defensive violence.

Feminist legal scholars argue that rather than being either a victim or a criminal, the experiences of abused women charged with violence represent a continuum of victimization and criminalization (Balfour 2008: 105, Miller 2005: 15). This continuum takes into account the lived experiences of women who come into contact with the criminal justice system and how the intersections of race, class, status and other power relations inform their experiences (Balfour 2008: 105). The continuum also recognizes that when women are charged with violence or threat of violence against their male spouse, there is a high probability that the violence was self-defensive (Miller 2005: 15). The “victimization-criminalization continuum” is not recognized in *R v Ryan*: it is argued that Doucet is either a victim *or* a criminal (Balfour 2008: 105). However, the gendered discourses used to victimize Doucet are also used, as a standard that she does not live up

to, in order to criminalize her. As the defence describes gendered characteristics that make her the perfect victim, the crown highlights all the ways that she does not live up to this standard and therefore argues for her guilt.

*R v Ryan* shows us the law as a gendering strategy that brings discursive meaning to a gendered subject. Throughout the trial the crown and defence debate Doucet's emphasized femininity, Battered Woman's Syndrome psychological discourse and gendered notions of her legal credibility within the binary construct of Victim/Criminal. Ultimately the Judge made a decision on the case based on the gendered characteristics attributed to her and her marriage to Ryan. Research on abused women who are charged with self-defensive violence shows that in criminal trial, they are constructed within a Victim/Criminal binary, one that is "arbitrarily drawn according to power relations as constructed through racially divided and class-based social structures, in tandem with the authority of law and other dominant discourses such as medicine, social services and welfare" (Faith 2010: 107-108). Women are constructed as either/or, and the gendered realities of the violence they face are not accounted for (Shaffer 1997: 9-11). Doucet was constructed within this binary divide, with both the crown and the defence debating her emphasized femininity, psychological discourses and legal credibility, and how they qualified her either a "victim" or a "criminal."

Both of the subject positions—victim and criminal—carry specific gendered meanings. When applied to women, the label of "victim" carries with it expectations about a character's behaviour and place within society based on race, class and gender. Proper victims are those who are helpless, docile, feminine, pure and white, and these are the women who usually benefit from the chivalrous criminal justice system (Belknap

2007: 152). Feminist criminologist Joanne Belknap, (2007) explains that the idea behind a chivalrous criminal justice system is that “it places women on pedestal and they need to be protected;” this tends to work in favour of white women who are “feminine and fragile” (152). Research shows that chivalry is reserved for “proper victims” (Dodge 2002 in Belknap 2007: 153). On the other hand, women who are statistically the victims of violence—racialized women, immigrant women, poor women and women with disabilities—are criminalized, an especially heinous label for a women because of gendered narratives of femininity. *R v Ryan* is an especially interesting case because although the gendered discourses used by the defence to frame Doucet fit the narrative of a “typical victim”—being an educated, middle-class, white woman—she is criminalized through an RCMP sting operation that targeted and entrapped her, continual appeals of her acquittal through the Canadian courts and constant negative media attention even after the Supreme Court of Canada decision to issue a stay of proceedings (*R v Ryan* 2013 SCC 3).

*R v Ryan* serves as a recent example of an older debate within feminist legal theory. Will the legal “victory” of acquitting a woman charged with fighting back against her abuser—by counseling to commit his murder—benefit those who come into contact with the Criminal Justice System with domestic violence charges? The Supreme Court decision may have consequences for women who hope to use the criminal justice system to defend themselves after being criminally charged for protecting themselves against male violence towards them, especially women who do not fit the same definition of “deserving victim.” The Supreme Court of Canada allowed the facts from the Nova Scotia Court of Appeal and Supreme Court of Nova Scotia, meaning that they accepted

the evidence that portrayed Doucet within the binary narratives of Victim/Criminal, which works to reinforce, rather than challenge, the dichotomy.

Further, the media coverage following the Supreme Court decision reinforces the Victim/Criminal binary divide by portraying Doucet as a monster who “took advantage” of the legal system by “pretending” to be an abused woman. There have been media claims that sexism against men has allowed for Doucet to “get away with hiring a hit man,” and that the Criminal Justice System has “let her off” for a crime that should be punished (McGuire 2013). This recriminalizes Doucet and reinforces the Victim/Criminal binary by failing to recognize that Doucet was reacting to a direct threat that, based on her experience of violence in her marriage, she had every reason to believe. *R v Ryan* will provide another written description of the way a woman should deal with an abusive partner. Instead of investing into programs that will educate about and prevent violence against women, the written law (now a precedent setting case in Canada,) (re)produces the binary divide between Victim/Criminal.

## **CHAPTER 5: CONCLUSION-LANGUAGE AND POWER**

Power is intrinsically linked to language. This concluding chapter will review the research of the thesis and draw attention to the ways that language is used to re-inscribe existing power relations through the legal narrative of *R v Ryan*. It will highlight the assumptions embedded in the language used to criminalize and victimize Doucet, and show how this affects the Knowledge/Power of abused women charged with self-defensive violence more broadly. I will explore the availability of language to adequately examine women's experiences of victimization and criminalization and reflect on the limitations of "victimization-criminalization continuum" in fully encapsulating the experience of Doucet in *R v Ryan* (Balfour 2008: 115). The chapter will pull together the methodology and analysis of the thesis, demonstrating how this case is a further example of the issues that apply to women charged with self-defensive violence examined in the academic literature review.

This thesis is a feminist, critical discourse analysis of the legal narrative of *R v Ryan*. The focus has centered on the gender ideology and gendered relations of power that are (re)produced, negotiated and contested throughout the trial. It aims to show how Doucet's victimization and criminalization were constructed with multiple (and interconnected) discourses by *both* the prosecution and the defence based on emphasized femininity, "Battered Woman's Syndrome" psychological discourses and legal credibility. The examination of the legal narrative of *R v Ryan* evolved through the three stages of critical discourses analysis: a description of the (spoken) text, an interpretation of the relationship between the text and its social interaction and an explanation of connections between the social interaction and social context (Fairclough 2001: 20-22). Through this

process, I was able to gain a clear sense of the manifestations of victimization/criminalization discourses that were applied to Doucet, and specific acts of resistance by Doucet to these gender scripts. Through several reviews of the data, I was able to expand my analysis of *R v Ryan* to see the multiple ways that Doucet was constructed through a Victim/Criminal binary. This was done specifically through discourses of her emphasized femininity, her psychological state and her legal credibility. Additionally, the thesis demonstrates that Doucet resists these gender scripts, enhancing our understanding of the dangers of using the Victim/Criminal binary construct, and the need to account for abused women's experiences through recognition of a "victimization-criminalization continuum." (Balfour 2008: 115).

### **I. Main Findings**

Manifestations of power emerge through the meaning that language creates (Foucault 1980: 52). In *R v Ryan*, specific gendered language is used to describe the victimization/criminalization of Doucet through discourses of emphasized femininity, "Battered Woman's Syndrome" psychological discourse and legal credibility. This works to reinforce hegemonic "truths" about Doucet's experience of violence within her marriage, as well as the way that she responded to that violence. This creates meaning, which re-inscribes power relations through the discursive production of "truth" as applied to abused women who use self-defensive violence. By using gendered discourses of emphasized femininity, Battered Woman's Syndrome psychological discourse and legal credibility, both the crown and defence are contributing to the discursive "truth" about abused women who fight back against violence in their relationships.

Power is manifested because of the authority of the law. As Smart (1995) argues, “law operates as a discourse which constructs legal subjects,” (3). In *R v Ryan*, the legal narrative of abused women who use self-defensive violence is based on gendered discourses of emphasized femininity, Battered Woman’s Syndrome psychological discourse and legal credibility. Through the trial, the legal subject of an abused woman who fights back against her abuser is (re)created: one that conforms to a very specific set of gendered characteristics (that also happen to be normatively white and middle-class) that do not apply to all abused women’s experiences. Further, because of the competing discourses between the crown and defence, Doucet is constructed through a Victim/Criminal binary that (re)enforces the idea that abused women charged with self-defensive violence are either victims *or* criminals.

According to Fairclough, (2001) language is powerful because of the assumptions embedded within discourse (43). In *R v Ryan*, the legal subject of the battered woman charged with self-defensive violence is discursively produced, and assumptions about her behaviour and experience become codified within the law. Both the crown and defence contributed the discursive construction of Doucet through “the very form of law to legitimate normative definitions based on gender, race and class” (Comack & Balfour 2004: 44). These normative definitions manifested in the gendered discourses of emphasized femininity, Battered Woman’s Syndrome psychological discourse and legal credibility and contributed to the reinforcement of the Victim/Criminal binary that Doucet was constructed within. Power is intrinsic within this legal process because it operates as “an invitation to lawyers and judges to interpret what is reasonable [by falling back on]

their culture, their class [and] race and gender stereotypes,” (Lees 1994: 125 in Comack & Balfour 2004: 45).

In *R v Ryan*, power was not only manifested through the crown and defence’s discursive construction of the Victim/Criminal binary, but also Doucet’s resistance to these narratives. Foucault describes power as a continuous cycle; Doucet’s resistance to the gender scripts used to describe her—emphasized femininity, “Battered Woman’s Syndrome” psychological discourse and legal credibility—are meaningful. It is important to note that Doucet conforms to these discourses in many ways (for example, she is white, middle-class and stereotypically feminine) however, there are meaningful times when she rejects the victimization and criminalization scripts used by the crown and defence to construct her. This adds to the manifestation of power in *R v Ryan*.

The legal narrative of Doucet in *R v Ryan*, constructed by both the crown and defence and accepted by the Supreme Court of Nova Scotia, Nova Scotia Court of Appeal and Supreme Court of Canada, fails to address the complexity of women’s experiences of violence. By (re)enforcing a Victim/Criminal binary that is rooted in gendered discourses of emphasized femininity, “Battered Woman’s Syndrome” psychological discourse and legal credibility, the experiences of women who do not fall into this construction are discounted and criminalized (Belknap 2007: 152). The legal narrative of *R v Ryan* becomes a further codified example of the way battered women should behave, and it is based on gender scripts of victimization and criminalization that place women within a binary. This re-inscribes power relations because the discourse is rooted within gender, race and class stereotypes that dictate who is worthy of protection by the law. Doucet is white, middle class and stereotypically feminine, and thus *R v Ryan* becomes another

example of how women with these characteristics are “deserving victims.” This is done through the language used to describe them, and the attached meaning and assumptions that discursively produce the legal characterization of battered women who fight back against abusers. A “victimization-criminalization continuum” is a better way to account for the experiences of abused women charged with self-defensive violence (Balfour 2008: 115). It takes into account the intersection between victimization and criminalization and allows for an analysis of how they inform the context of the experiences of women charged with self-defensive violence.

Although the “victimization-criminalization continuum” offers a favourable alternative to the Victim/Criminal binary, a major limitation of this concept is that the continuum implies a linear degree of difference between victimization and criminalization, and thus can work to reinforce the Victim/Criminal binary. Challenges arise when dominant feminist discourses—such as the “victim” of male violence who only uses violence to defend herself—fail to account for the full experience of the individual. Feminist researchers Suzanne McKenzie-Mohr and Michelle LaFrance, (2010)—in their analysis of the narrative challenges that arise from women’s attempts to explain their experiences of depression and rape—introduce the term “tightrope talk” to refer to “participants attempts to make meaning of their experiences as they negotiate both agency and blame in ways that dominant discourses fail to do” (49). The difficulties that arise from describing women’s experiences of violence within the available discourse points to the need to discover how we can tell new stories that fully account for women’s experiences, despite our currently being without adequate language to frame its context and meaning (McKenzie-Mohr & LaFrance 2010: 50).

## **II. Conclusion**

Balfour (2012) argues that a state that prioritizes an expansion of the prison industry complex, increasing police budgets, decreasing funding for legal aid, the introduction and continued use of mandatory minimum sentences, the criminalization of drug dependency and use of jails and prisons to “warehouse” those with mental health issues has increased the instances of women’s victimization, criminalization and punishment (4). Further, she maintains that legal practices work to sever women’s criminalization from their own narratives of abuse by relying on “hegemonic tales” of dangerous, manipulative women and innocent, helpless victims, rather than engaging with the “gendered condition of endangerment” in patriarchal societies (4-5).

This thesis has delved into the phenomena of abused women fighting back against their abusers by researching the binary construct of Victim/Criminal that Doucet was constructed within in *R v Ryan*. It shows how the crown and defence constructed Doucet through connected and overlapping gendered discourses of emphasized femininity, Battered Women’s psychological discourse and legal credibility. The thesis has shown how these narratives, present in the expectations of Doucet in her marriage and echoed in the trial, are discursively linked and work to produce a gendered identity of Doucet. She is a victim: a feminine, passive, domestic woman who unconditionally loved and wanted to help her violent husband, but had no other option (because of the lack of response by police) than to try to have him killed after he threatened the lives of her and their daughter. This narrative, also reflected in the judicial decision, is problematic both because it does not adequately encapsulate Doucet’s experiences of violence and it serves as a legal record of the discourse surrounding the “right” kind of victim of violence against women. Women who are criminally charged for using self-defensive violence are often

constructed through a binary construct; *R v Ryan* is an example of this and contributes to the Power/Knowledge of women as the Victim/Criminal (Foucault 1980: 52).

Faith (2010) argues that we know less about women who participate in violence than as victims of violence (98). This project has been a feminist, post-structural critical discourse analysis of *R v Ryan*—a case where a woman *both* participates in (through counseling to commit the murder of her abusive husband) and is a victim of violence—at the Supreme Court of Nova Scotia level. It has engaged with current academic literature on abused women who participate in self-defensive violence, and a blend of the post-structural theoretical work of Michel Foucault and Carol Smart. It was found that Doucet was constructed in a Victim/Criminal binary divide based on connected gendered discourses of that were significant in the outcome of the trial by listening to audio recordings of the trial and examining the judicial decision, crown and defence factum. The crown and defence debated Doucet's emphasized femininity, Battered Women's psychological discourse and legal credibility to present a narrative based on the gendered implications of her victimization or criminality. It was also found that Doucet resisted these narrow gender scripts before and through the trial.

This thesis serves as a reminder that we must continue to examine the effects of the Criminal Justice System on women. We need to look past what are, at first glance, apparent legal victories and truly understand the effects they will have on women charged with self-defensive violence. This thesis could be expanded upon with further research by critically analyzing the media attention of the case, in particular the reports that have been published since the Supreme Court decision. These articles call for an inquiry to the

response to the case and release of the taped exchange between Doucet and the RCMP, as well as a retrial (Auld 2013, McCharles 2013).

## **Appendix A-Timeline of Events**

**1992:** *April 16*-Nicole Doucet and Michael Ryan marry.

**1994:** First violent incident occurs after disagreement in discussion of politics with neighbour.

**1996:** Threats of violence begin to occur every one-one and half weeks. Sexual assaults begin. Ryan is transferred to Trenton for military duty and Doucet relocates to concession NS for a teaching job. On December 6, Ryan is involved in a physical assault at a bar.

**1997:** Ryan is transferred to Gagetown, NB for military duty. In December, Ryan puts hands around Doucet indicating he would “wring her scrawny little neck.”

**2000:** *March 20*-Aimee is born.

**2000-2004:** Many incidents occur in which Ryan points a gun to Doucet’s head and threatens her.

**2002:** Doucet is forcibly cut off from her family. Ryan is diagnosed with hepatitis C. Ryan threatens to burn down the house if Doucet leaves him. Medical records from this year indicate Ryan’s history of anger awareness and management.

**2004:** Situation gets progressively worse when Ryan returns home permanently.

**2004 onwards:** Ryan threatens to kill Doucet and Aimee repeatedly.

**2006:** Ryan forces Doucet to steal money from her estranged mother’s account and when she refuses to sign an affidavit, he threatens to “destroy her.”

**2007:** *March*- Ryan is involved in a road rage incident. *June*-Ryan holds a gun to Doucet’s head. *May-August*-Doucet has suicidal thoughts. *November*-Ryan begins to stalk Doucet, phoning her seventeen times in one day. Doucet fears for her and Aimee’s safety. *December*-Doucet moves out of the house, Ryan threatens to burn down the house with her and Aimee inside.

**2008:** *January*- Doucet becomes terrified. Ryan calls Child Protection Services to make a complaint about Doucet and her anxiety increases. *February*: Ryan stalks Doucet at her place of employment. Police inform Doucet there is “nothing they can do in a civil matter.” *March 27*-Doucet is charged in counseling to commit murder.

**2009:** *December*- hearing at Digby, NS.

**2010:** *January*-trial at Supreme Court of Nova Scotia; acquittal granted on January 29.

**2011:** *January*-appeal at Nova Scotia Court of Appeal; acquittal upheld on January 25.

**2012:** *June*-appeal heard at Supreme Court of Canada on June 14.

**2013:** Supreme Court of Canada decision released; acquittal overturned, stay of proceedings issued on January 18.

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