

# New York Law Journal

## Beyond Violence: Recognizing and Addressing All Forms of Domestic Abuse

In his Divorce Law column, Alton L. Abramowitz discusses the question of whether there ought to be a greater recognition of the consequences of non-violent behavior, which has once again been thrust into international news.

By Alton L. Abramowitz | April 04, 2019 at 2:45 PM



The Everly Brothers and later the Scottish rock band Nazareth both famously sang Love Hurts (written by Boudleaux Bryant). The reality is that love should not “hurt” in the way that far too many people experience it at the hands of someone who is using physical and psychological behaviors to control their victims who they supposedly “love.”

Literally at the outset of this year, the question of whether there ought to be a greater recognition of the consequences of non-violent behavior once again broke into international news when HuffPost headlines proclaimed on Jan. 3, 2019 that “Emotional and Psychological Abuse are now Crimes in Ireland.” Ireland’s Domestic Violence Act of 2018 (effective on Jan. 1, 2019) for the first time included “coercive

control” as a form of domestic violence which is punishable by up to five years of imprisonment. See Section 39 of the Domestic Violence Act of 2018. As was noted by the HuffPost, “[t]he legislation defines coercive control as ‘psychological abuse in an intimate relationship that causes fear of violence, or serious alarm or distress that has a substantial adverse impact on a person’s day-to-day activities.’”

The other side of the Atlantic Ocean saw headlines marking the escalation of the movement in the United Kingdom to make “financial abuse” part of the UK’s domestic violence law at the end of January. See Allison Herrera, UK lawmakers push to include financial abuse

in domestic violence law, PRI's The World (Jan. 29, 2019).

March saw the continuation of renewed focus on domestic abuse with Ireland's ratification of the Istanbul Convention on preventing and combatting violence against women on March 8, 2019. Kitty Holland, Government ratifies Istanbul Convention obliging it to tackle violence against women, *The Irish Times* (March 8, 2019). A day or so later, the UK's *Telegraph* published an article by Gabriella Swerling titled Men becoming 'increasing victims' of coercive control, legal experts claim (March 10, 2019).

In January of this year, Congress extended for a brief period the Violence Against Women Act as part of the financial legislation that reopened the U.S. government.

Laws criminalizing domestic violence in many jurisdictions throughout the world have evolved to the modern perspective that love should not be injurious to family members to the point where physical injury has occurred or is in danger of occurring. Beyond the physical, we now recognize that there is more to domestic violence and abuse than bruises, broken bones and similar evidence of cruelty perpetrated by a spouse, intimate partner, significant other, parent or other family member, household member, etc. Famously, the Domestic Abuse Intervention Project in Duluth, Minn. developed the Power and Control Wheel, which was designed to enable those working in the field of domestic violence to identify those behaviors that a "batterer" employs to "control the life and circumstances" of the victim(s). See also *The National Center on Domestic and Sexual Violence*.

In the divorce arena, domestic violence and abuse has, to a certain degree, become more easily identifiable with the advent of No-Fault Divorce (DRL §170[7]) because there has been a wholesale retreat in the courthouse and in most matrimonial litigation from the utilization of the still existing fault grounds for divorce, including cruel and inhuman treatment (DRL §170[1]). Instead, more and more often cases involving applications for Orders of Protection based on the commission of Family Offenses are seeing the light of day in the courtroom. See FCA Article 8 and DRL §252, etc. Because Family Offense proceedings are defined by reference to various

acts of criminality under the Penal Law, there is often a hesitancy on the part of the judiciary to act unless, as many divorce practitioners note, "there is blood on the floor."

The foregoing legislation ties into the Power and Control Wheel, which identifies eight indicia of behavioral control accompanying physical and sexual violence:

"Coercion and threats—Making and/or carrying out threats to do something to hurt [the victim], commit suicide, or report [the victim] to welfare. Making [the victim] drop charges. Making [the victim] do illegal things;"

"Intimidation—Making [the victim] afraid by using looks, actions and gestures. Smashing things. Destroying [the victim's] property. Abusing pets. Displaying weapons."

"Male [or Female] privilege—Treating the victim like a servant; making all the big decisions, acting like the master ..., being the one to define men's and women's roles."

"Emotional abuse—Putting [the victim] down. Making [the victim] feel bad about [themselves]. Calling [the victim] names. Making [the victim] think [they're] crazy. Playing mind games. Humiliating [the victim]. Making [the victim] feel guilty."

"Economic abuse—Preventing [the victim] from getting or keeping a job. Making [the victim] ask for money. Giving [the victim] an allowance. Taking [the victim's] money. Not letting [the victim] know about or have access to family income."

"Isolation—Controlling what [the victim] does, who [the victim] sees and talks to, what [the victim] reads, and where [the victim] goes. Limiting [the victim's] outside involvement. Using jealousy to justify actions."

"Using Children—Making [the victim] feel guilty about the children. Using the children to relay messages. Using visitation to harass [the victim]. Threatening to take the children away.";

“Minimizing, Denying and Blaming—Making light of the abuse and taking [the victim’s] concerns seriously. Saying the abuse didn’t happen. Shifting responsibility for abusive behavior. Saying [the victim] caused it.”

Thus, the eight indicia identified on the wheel are exactly the kinds of behaviors that the new Irish law is broadly designed to prevent. In doing so, it presents a legislative attempt to overcome centuries of tolerance of bad behavior utilized predominantly by men to exercise control over their significant others to the detriment of that other intimate partner in both overt and insidious ways.

FCA §812 sets forth those acts that New York considers to be “family offenses.” They are: assault, attempted assault, disorderly conduct, harassment, sexual misconduct, forcible touching, sexual abuse in the second and/or third degrees, stalking, criminal mischief, menacing, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation, identify theft in the first and/or second and/or third degrees, grand larceny in the third and/or fourth degrees, and/or coercion in the second degree. See, e.g., Penal Law §135.60. It is here, in defining the acts that constitute family offenses that Ireland’s Domestic Violence Act of

2018 appears to go beyond merely limiting offensive behavior to acts that were heretofore defined by reference to that Country’s criminal laws. Instead, the Domestic Violence Act criminalizes the kind of offensive, controlling and coercive psychological behaviors that perpetrators of domestic violence have employed since the beginning of time to enslave in servitude spouses, intimate partners and even children.

Kudos to Ireland’s Legislature for its actions in freeing its judiciary to look deeper into the impact of those behaviors on the victim and to apply punishment in appropriate cases. At the same time, the New York Legislature should take a fresh look at its own domestic violence and abuse laws to determine whether they should be broadened in a way that gives judges the discretion to protect victims in a way that was not previously contemplated. It’s time for our laws to once again evolve so that abusive behavior towards an intimate partner, be they spouse, lover, etc., is more specifically defined and dealt with by our legal system.

*Alton L. Abramowitz is a partner and chair of the matrimonial law department at Schwartz Sladkus Reich Greenberg Atlas, and a past National President of the American Academy of Matrimonial Lawyers)*

*Reprinted with permission from the “April 4, 2019” edition of the “New York Law Journal”© 2019 ALM Media Properties, LLC. All rights reserved.*

*Further duplication without permission is prohibited. ALMReprints.com – 877-257-3382 - reprints@alm.com.*