Forced Marriage and “Honour” Based Violence: Information for Police

This booklet contains general information relating to the particular subset of family violence commonly referred to as “honour” based violence and forced marriage.

It is not meant to be a training guide but it can be adapted for training purposes.

Disclaimer: This draft information resource does not necessarily reflect the views of the Department of Justice Canada or the Government of Canada.
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1. Introduction

1.1 Purpose of the Document

This resource has been developed to provide Canadian police with background information on violence committed in the name of so-called “honour” (HBV) and forced marriage (FM). This information may be helpful to police when they are identifying, investigating, and preventing crimes related to HBV and FM. The document is designed to serve as a collection of basic information on which professional training or guidelines may be developed by the relevant authorities.

This document was developed in consultation with police, Crown prosecutors, other criminal justice system professionals and government officials. Many of the individuals involved in the consultations have had professional experience investigating or prosecuting HBV and FM cases in Canada.

The drafters gratefully acknowledge the Crown Prosecution Service (CPS) of the United Kingdom (UK), the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO) and the Foreign and Commonwealth Office (FCO) and Home Office Forced Marriage Unit, whose presentations, guidelines and strategies on HBV and FM have served as an inspiration for this information resource.

1.2 Why Focus on “Honour” Based Violence and Forced Marriage?

Violence that is committed in the name of so-called “honour” is a form of family violence perpetrated because of a belief that it will restore family honour that was lost due to “shameful” conduct. While not without difficulties, the term “honour based violence” is often used by experts in the field and can be useful in identifying a unique subset of family violence for the purposes of prevention, investigation and prosecution.

So-called “honour” based violence is violence perpetrated against a family member, usually female, who is perceived to have brought shame or dishonour to the family by engaging in conduct considered unacceptable within the community with which the family identifies. Examples of unacceptable conduct vary but might include some

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1 The term “honour based violence” is controversial for several reasons. First, there are concerns that it may incorrectly suggest to some that there is a legitimacy to the violence. This is reflected in the fact that “honour” still exists or was only recently abolished as a mitigating factor in sentencing in some countries. Second, the term is also controversial because of concerns that it may lead to negative stereotypes and erroneous beliefs that all families who care about honour support the use of violence to maintain honour. Third, the term “honour based” may also detract from the fact that family violence is a universal problem, and place a disproportionate focus on the cultural or religious context of this particular subset of family violence. This in turn may stigmatize an entire ethno-cultural community by suggesting that they are characterized by or associated with high levels of family violence which is not reflected in the statistics. We have placed the word “honour” in quotation marks to reflect that fact that family violence can never be honourable.
behaviour considered quite minor or commonplace in the larger mainstream community, such as:

- wearing make-up or clothing that is considered too revealing (views on this may vary considerably from family to family);
- talking to or dating boys or kissing in a public place;
- engaging in pre- or extra-marital sexual relationships (even if only a rumour);
- pregnancy outside marriage;
- interfaith relationships;
- rebelling against family traditions (including refusing to practice the family faith); or
- refusing an arranged marriage.

One or more family members may believe that the only way to cleanse the shame or dishonour and restore the family’s reputation is by using violence. Some examples of crimes committed to restore honour include:

- uttering threats;
- criminal harassment
- assault, assault with a weapon or aggravated assault;
- forcible confinement;
- counselling suicide; and
- homicide.

Crimes committed in the name of honour are usually planned and carried out with some degree of approval, and sometimes even collusion, from other family and/or community members. As a result, risk assessments in cases involving potential HBV may differ from those applicable in other family violence cases. Some specific contextual features commonly seen in cases labelled as HBV include the belief that female family members hold the family honour and preserve the family’s culture, and that their behaviour, sexuality and “reputation” must be controlled by male family members.

There is a link between HBV and forced marriages because honour crimes may be employed either as a means of enforcing an imposed marriage or as punishment for a refusal. Forced marriage (FM) is significantly different from arranged marriage because in an arranged marriage both individuals consent whereas in a forced marriage one or both spouses do not consent. Family members sometimes use emotional coercion, threats, physical violence, abduction, forcible confinement or extortion to force the person into the marriage.

Incidents of FM and HBV do not exclusively occur in any particular ethnic, religious or cultural community. In fact, incidents of HBV and FM have occurred in families with many different religious and cultural backgrounds. ²

Although most police have experience responding to incidents of family violence, they may be less familiar with the specific context within which an incident of family violence involving HBV and FM may occur. Some understanding of this context and the unique characteristics of crimes committed in the name of so-called honour may assist police in more effectively intervening to prevent criminal activity, assessing risks associated with threats of HBV and FM, responding to particular victim vulnerabilities and identifying patterns that may expand the scope of their investigation. In particular, subconscious assumptions held by justice system personnel about the behaviour of families and family members may need to be identified and re-examined (for example, beliefs that parents would never kill their own child for something that may appear “unimportant” or “inconsequential” like wearing make-up). Likewise, general information on the patterns of HBV and FM may assist police and Crown prosecutors in more effectively gathering evidence of premeditation, complicity and/or conspiracy to commit offences.

1.3 International Responses

It is helpful to take into consideration the varying approaches to HBV and FM that different jurisdictions have taken. The United Kingdom (UK) has demonstrated a high degree of leadership in this area. For example, in 2000 the UK created a Forced Marriage Unit that intervenes both in domestic cases of FM as well as in overseas cases involving British nationals. In 2008, the UK Association of Chiefs of Police Officers of England, Wales and Northern Ireland (ACPO) implemented an so-called HBV strategy which includes specialised training for police and prosecutors. Furthermore, in 2007 the Forced Marriage (Civil Protection) Act came into force offering protection orders and provisions to stop someone from being taken abroad where there is a risk of forced marriage.

Other countries have also taken steps. In 2003, Norway became the first country to criminalise FM with Belgium following in 2007 (an approach rejected by the UK following public consultations in 2008). In 2007, the Netherlands established an interdepartmental honour related violence program. In Denmark, a national commission was established for police action against honour related crime and their immigration rules were tightened with the intention of preventing forced marriage sponsorships while in Sweden, materials have also been made available for schools to help teachers and youth identify honour based violence.
2. Terminology and Background

2.1 What is “Honour” Based Violence?

“Honour based crime”, “honour based violence” or “honour killing” are not legal terms. Rather they are terms that describe a particular background context or motivation for crimes that are otherwise general in nature and application. Various criminal offences might be committed in the name of so-called “honour”.

“Honour” based violence is generally defined as criminal conduct which has been motivated because the perpetrator perceived that the crime was necessary or acceptable in order to protect or defend the honour of the family even sometimes of the victim, and/or community.

Honour is an important principle held by many people in countless different cultures. It has been a central principle over various time periods and remains so today. It is often linked to how a person views themselves, and how in turn they are viewed by others. It may be more noticeable in its absence than in its presence. In other words, honour is not necessarily given much consideration until a dishonourable act is committed and a person is shamed.

Media coverage of convicted murderers are good examples of how the shame associated with the conviction can sometimes be shared by the family, forcing other family members to also face notoriety in some circumstances.

In some ethno-cultural communities, honour is a trait thought by many to be held by the female members of the family. Inappropriate behaviour on their part can tarnish the family honour. Even if a female is sexually assaulted, the honour of the family can be considered to have been affronted. According to some beliefs, honour to the family can be restored, but only through an act of violence toward the person who has tarnished that honour.

Within families and communities that hold such beliefs, it is considered the duty of the men and boys, particularly the male next of kin, to protect and control the female family members to ensure that they not only behave honourably, but are kept from any situation where there is a possibility of even unfounded rumours or gossip.

Where family honour is lost, it is considered the duty of the same men and boys to restore that honour. Failure to “cleanse” the honour of the family can lead to results that are

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considered serious to that family, including being ostracised by the community and having “unmarriageable” children. Parents are sometimes also concerned about “losing” children to the surrounding mainstream culture and values. In such instances, violence may be viewed by some as the only means possible to restore the family’s honour and position in the community, and to avoid stigmatization of the other family members, including any other children. This may result in the commission of a number of criminal offences directed against the female family member believed to have tarnished the family honour.

According to some beliefs, the perceived loss of honour can also be redressed by FM as a means to stop rumours or gossip or to end unacceptable behaviour.

2.2 Who are the Victims and Perpetrators of “Honour” Based Violence?

Women and girls are predominantly, although not exclusively, the victims of HBV. Sometimes younger female family members are also targeted (either forced to watch the violence or subjected to violence themselves) in order to discourage them from following the path of the older female family member.

Men and boys may also be victims. Male victims may be non-family members who are associated with the behaviour by the woman that was seen as unacceptable (e.g. boyfriends, fiancés or husbands). They may also be family members who are targeted for defying the family (e.g. refusing an arranged marriage) or for defending the woman or girl who is believed to have shamed the family. In addition, boys or men who are perceived not to be acting within their assigned gender roles may be targeted, for example, a boy who is or is perceived to be gay.

The perpetrators are generally male family members: husbands, fathers, uncles or brothers. Female family members may also be complicit in or even instigators of the violence. Family meetings are often held to determine who will carry out the violence, and younger males may be chosen because they may be perceived as more likely to receive a lower sentence. Other members of the community may assist by helping to locate and return a victim who has fled the family home, or by refusing to cooperate with investigators. Other community members may also put pressure on men to restore their honour through violence when their family honour has been tarnished.

Because victims of HBV and FM, and sometimes other family and community members who assist them, may be threatened by multiple persons from within their family and community both in Canada and abroad, the risks can be akin to those facing a victim of organized crime. On some occasions, third parties may even volunteer or be hired to conduct the honour killing.

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4 See for example the Sadiqi case in Subsection 8.1.
2.3 What is the Modus Operandi of “Honour” Based Violence?

Since HBV is motivated by the belief that violence is necessary to restore family honour, the perpetrator generally commits the violence for the benefit of a specific audience. In this regard there are some similarities with gang-related retaliatory violence where a perceived affront to a member’s “honour” must be countered with violence. The extended family or community, for whose sake the honour is being restored through HBV, may not be situated in Canada. Some “honour” killing cases have occurred following a trip by the perpetrator to their country of origin or communications with extended family abroad regarding the behaviour of the victim.5

The fact scenarios in a number of “honour” killings in Canada, the UK and the US indicate that often a victim of HBV who has fled the home is lured back with a promise of reconciliation prior to the homicide. Victims may therefore be at a heightened risk of serious or fatal violence when visiting family members who have previously threatened to kill them.

2.4 What are the Consequences of “Honour” Based Violence for the Victims?

Victims of HBV may have their liberty severely restricted and may be physically and psychologically harmed. They may also be fearful for their safety as well as for that of others they care about (including romantic partners, friends and family who assist them and younger female siblings). Victims of HBV may be torn between feelings of loyalty and attachment to their family and fear for their safety. The decision to leave the family home may be very difficult because they run the risk of being ostracized from the entire family and community as a result. Victims of HBV often live in constant fear for their lives, even if they do leave the family home. They are also at a heightened risk of being criminally harassed or pressured or forced to commit suicide.

2.5 What is Forced Marriage?

It is important to distinguish arranged marriages from forced marriages. In arranged marriages, the individuals always give their free and informed consent to the marriage, even though in some cases that consent may be reluctantly given. In forced marriages, one or both individuals does not consent. All forced marriages are arranged, but not all arranged marriages are forced.6

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5 Legal provisions which stipulate that honour can be a mitigating factor in sentencing for murder exist or have only recently been abolished in some countries.
A variety of means might be employed to force or constrain a person to marry against their will, often beginning with non-criminal means, such as moral suasion or threats of being cut off from family, but sometimes escalating where compliance is not obtained to conduct involving a criminal offence, such as uttering threats of physical violence, threatening or harming other loved ones or pets, forcible confinement and/or assault. While it is difficult to discern before the fact which situations may escalate to criminal conduct, it is important to recognize that an individual with complaints of significant family pressure to marry against their will may be at heightened risk of becoming a victim of a criminal offence related to a subsequent FM or to HBV, including a possible honour killing.

2.6 Who are the Victims and Perpetrators of Forced Marriage?

Both males and females can be subject to FM. Many victims are minors, but adults may also be forced into marriages. In many cases, they are forced to marry by their parents who likely believe that they are acting in the best interests of their child and of the family. Forced marriages have been known to occur when the family takes their son or daughter to their native country, sometimes under false pretexts, (for example, victims can be told they are going to a family wedding, when in fact the wedding is their own). Once there, the victim is forced to wed a spouse that the parents have chosen for them.

2.7 What are the Motives for Forced Marriage?

Some of the key motives for forced marriage identified by the UK Multi-agency practice guidelines: Handling cases of Forced Marriage, include:7

- controlling or preventing unwanted sexual behaviour (including perceived promiscuity, or being or being perceived to be lesbian, gay, bisexual or transgendered) - particularly the behaviour and sexuality of women (they may also be vulnerable to other HBV such as “corrective rape”);
- controlling unwanted non-sexual behaviour, for example, alcohol and drug use, wearing make-up or behaving in what is perceived to be a "westernised manner";
- preventing "unsuitable" relationships, e.g. outside the ethnic, cultural, religious or caste group;
- attempting to strengthen family links and/or fulfill long-standing family commitments;
- achieving financial gain;
- ensuring land, property and wealth remain within the family;
- ensuring care for a child or adult with special needs when parents or existing carers are unable to fulfil that role; and
- assisting claims for residence and citizenship.

Anecdotal reports by Canadian service providers indicate that the factors listed above are also reflected in incidents of forced marriage in Canada.

Most incidents of FM are related to family honour. For instance, if the marriage was a long-standing promise between families, or was arranged with the widespread knowledge of the community, or as a means to redress perceptions that a child is “too westernized”, then parents may perceive that their child’s refusal to “do their duty” and accept the arranged marriage will result in the family “losing face” in the eyes of the community. As noted above, the loss of honour in the eyes of the community can have serious impacts including the possibility of rendering other siblings unmarriageable within the community. It is also possible that if an older sibling refuses a marriage and runs away, younger siblings of the same gender may then be forced to marry in order to fulfill a longstanding promise.

Parents may also be worried about the future of their child and believe that the marriage will alleviate concerns about their child’s behaviour and its impact on their own acceptance in the community or on the future of their other children and family. As a result, the parents may eventually perceive the need to resort to the threat or use of violence. Other incidents of FM may be motivated by factors less related to family honour, such as financial (including dowry-related) or immigration concerns.

A woman or girl who has been sexually assaulted may be at a heightened risk of being forced into a marriage because of a belief that marriage may help restore family honour. Also, if the parents believe that their child is gay, lesbian, bisexual or transgendered they may believe that forcing them to marry an opposite sex partner will “cure” them of what is considered abnormal behaviour.

2.8 What are the Consequences of a Forced Marriage on the Victim?

Victims of forced marriage, particularly women and girls, run a significantly high risk of being subject to repeat sexual assault. The husband might assume that once married he has the right to have sex with his wife even against her will. The victim may not be aware that non-consensual sex constitutes assault under Canadian law even within a marriage. Depending on the reasons behind the forced marriage, the victim may also be forced into domestic servitude and be subjected to physical domestic violence by extended family. Honour crimes and honour killings can also occur following a FM if one of the partners, usually the woman, is accused of inappropriate behaviour or adultery. A FM can also lead to suicide, particularly for victims who feel completely powerless in their own lives and see no hope for another way out.

Some victims are forced into marriage abroad, sometimes resulting in interruptions in their education or employment and limiting their career opportunities. Female victims run a high risk of losing their autonomy, their right to work, have friends or go to school.

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8 Legal provisions that acquit rapists or kidnappers if they marry their victims exist or have only recently been abolished in some countries.
They may be forced to bear children. They may also feel that they are powerless to end the relationship.

The decision to leave a FM is extremely difficult given the risks that the victim will be ostracized from their family and community. They may also lack the financial resources to leave, particularly if they have been forbidden from working or if their earnings have been seized. Leaving a FM may be perceived as a shameful act that will bring dishonour on the family. As a result, victims of FM are extremely vulnerable to HBV, including “honour” killings.
3. Some Barriers to Reporting

Victims of family violence – be it spousal, child or elder abuse – all face the same fundamental barriers to reporting the violence to the police: they are emotionally tied to and possibly dependent upon the perpetrator of the violence. In addition to these critical obstacles, victims of FM and HBV may face other barriers to reporting the violence to the police. The following subsections identify some of the particular challenges facing victims of FM and HBV.

3.1 Relationship with Law Enforcement Authorities

Some newcomers to Canada may come from regions where civilians have a distrust and fear of law enforcement based on systemic concerns like corruption and abuse of power. This may impact their willingness to contact police if they are either a victim or a witness of FM or HBV.

Prior negative experiences with law enforcement abroad, may also prompt victims or witnesses to fear discrimination if they contact the police. Some may be more reluctant due to concerns that the perpetrator may be treated more harshly than other non minority perpetrators or because they believe that they themselves will not be taken seriously.

3.2 Marginalization of Ethno Cultural Minority Communities

Some ethno-cultural minority community organizations have expressed serious concern that the negative stigma associated with what they see as the “labelling” of certain forms of family violence as “honour based” will result in further marginalization of their communities. They fear that an emphasis on HBV is disproportionate and may serve as a conduit for anti-immigrant sentiment. They prefer the emphasis to be on the fact that family violence is unfortunately persistent in all Canadian communities, including both mainstream and minority, and so that it should be addressed in all, rather than singling out any particular community. This concern may increase the reluctance of community members to work with justice system personnel or for victims to speak out against family violence.

The possible further marginalization of certain ethno-cultural minority communities could not only be devastating for community members – it may also be tragic for victims within those communities. Vulnerable members of a community may have even fewer opportunities to seek assistance when victimized if the community feels “under attack”.

Conducting additional outreach activities with community leaders and diverse community organizations may address some of these barriers to reporting. There may be some helpful resources from within communities who already work to assist the victims who can help inform the authorities about how best to reduce these barriers.9

9. It may be helpful to For example, a useful booklet entitled Outreach Strategies for Family Violence Intervention with Immigrant and Minority Communities is available at
3.3 Fear of Retribution from Family and Community

A victim of HBV or FM may be unwilling to report the violence to the police for fear of further violence by members of the extended family or community. A victim who has left the family home may be afraid that members of their community might try to return them to their family.

Victims of sexual violence, regardless of whether it was stranger or family violence, may be even more reluctant to report the assault to the police for fear of retaliatory violence in the name of honour (i.e. she may be punished for having brought shame and dishonour to the family or community). This is in addition to the shame and fear of stigma associated with being a victim of sexual violence that is a consistent phenomenon across many cultural groups.

Other victims may be reluctant to come forward because they share the value system underlying the HBV or FM. They may believe that they have brought dishonour to the family by breaching the honour codes of their family or community and have therefore “caused” the violence. These victims may be afraid that reporting the violence will only increase the family “shame” by rendering it more public (even to law enforcement authorities), thereby warranting further punishment.

3.4 Linguistic and Informational Barriers

Some victims may not speak either English or French well enough to feel comfortable calling the police. In some cases, they may not be aware that the violence they are experiencing is against the law in Canada. This is particularly the case for incidents of marital rape and for various acts of physical child abuse, which may not be criminalized in their countries of origin.

As in other areas, the use of multilingual public legal education and information material and public information announcements through minority cultural media can assist in raising awareness of Canadian laws and legal protections. Multilingual interpretation services for the police and victim service providers can also be of assistance in increasing access to justice for victims facing language barriers.

Caution:

In HBV and FM situations care should be exercised to ensure that the victim agrees to the specific interpreter before their identity is revealed, as the interpreter may be part of the extended family or community that is seeking to enforce the FM or punishment on the victim.


10 An example of such a resource would be the publication Abuse is wrong in any Language available at http://www.justice.gc.ca/eng/pi/fv-vf/plei-vij/index.html
3.5 Immigration Concerns

Victims who were born outside of Canada may be afraid of reporting violence due to founded or unfounded fears of deportation. In some cultures, separated or divorced women are ostracised and harassed for bringing shame and dishonour on their families and communities. Some victims are extremely fearful of being returned to their country of origin. As they may be at a heightened risk of an honour killing if returned to the country of origin.

Many victims may erroneously fear deportation because they are unaware of their immigration status and/or may not understand their rights in Canada.

Victims with concerns related to their immigration status could be referred to an immigrant-serving organization or a lawyer in private practice for advice and information about their options. A directory of local community and government services for immigrants can be accessed at: www.servicesfornewcomers.cic.gc.ca. Further information is also available from Citizenship and Immigration Canada (CIC): www.cic.gc.ca or 1-888-242-2100/1-888-576-8502 TTY.

In general terms, if a Canadian citizen or permanent resident leaves a relationship due to domestic violence, there is no impact on their immigration status in Canada and they are not at risk of removal. If a temporary resident (for example someone in Canada on a student or work visa) leaves a relationship due to domestic violence, they remain a temporary resident and can stay in Canada until this status expires.

The vast majority of sponsored spouses arrive in Canada as permanent residents. However, some spouses arrive as temporary residents and apply for permanent status from within Canada. If they leave a relationship due to domestic violence, their sponsor could withdraw sponsorship. Should they still wish to become a permanent resident, they must apply under a different immigration category. In the meantime, they would remain a temporary resident and could stay in Canada until this status expires.

Canada offers refugee protection to people who fear persecution and are unwilling or unable to return to their home country. Canada was the first country to develop gender-based guidelines to protect women fleeing gender-based persecution. Gender-specific forms of persecution include honour-based violence, forced marriage, other forms of family violence, rape and forced sterilization.
4. Criminal Law

4.1 Criminal Offences

There is no legal category of “honour” crimes. Various criminal offences may be committed in the name of so-called “honour”. While the criminal law does not require proof of a motive for a crime, evidence of motive can be relevant in a criminal trial.\textsuperscript{11} Moreover, understanding the context within which violence has or may occur is extremely helpful to investigators.

In a similar vein, there is no specific offence of “forcing someone to marry” in the \textit{Criminal Code}. However, perpetrators may commit a number of offences with the motive of forcing a person, usually their child, to marry. In addition, multiple, and sometimes extremely serious, offences may be committed against the victim of a FM by their new spouse subsequent to the FM.

Relevant \textit{Criminal Code} offences may include:

- failure to provide necessaries of life (s. 215)
- criminal negligence (including negligence causing bodily harm and death) (ss. 219-221)
- homicide – murder and manslaughter (ss. 229-231 and 235)
- criminal harassment (s. 264)
- uttering threats (s. 264.1)
- assault (causing bodily harm, with a weapon and aggravated assault) (ss. 265-268)
- sexual assault (causing bodily harm, with a weapon & aggravated sexual assault) (ss. 271-273)
- removal of child from Canada (with intent to commit act outside Canada that would be one of listed offences if committed in Canada) (s. 273.3) (The listed offences are child–specific sexual assault offences, the general sexual assault offences and ss. 267, 268 and 269 (i.e., assault with weapon/ causing bodily harm, aggravated assault and unlawfully causing bodily harm))
  - kidnapping (s. 279)
  - forcible confinement (s. 279(2))
  - abduction of a young person (ss. 280-283)
  - procuring feigned marriage (s. 292)
  - extortion (s. 346)
  - intimidation (s. 423)
  - counselling or aiding or abetting suicide (s. 241)

\textit{Inchoate and party liability}

\textsuperscript{11} Roach, Kent, \textit{Criminal Law}, 4\textsuperscript{th} ed. (Toronto: Irwin Law, 2009) at 169.
A person may also be criminally responsible where crimes are committed by another, or where the crime that is intended to be committed is not completed. Cases of FM and HBV generally involve multiple offenders, which can include family, extended family and community members within the country and abroad. Family or community members may counsel the commission of an offence in the name of “honour” and they may conspire to commit such offences. Likewise, there may be participation as accessories after the fact. As a result, investigation will usually include a determination of the scope of participation by family members and other members of the community.

The following Criminal Code provisions should also be considered:

- attempts (s. 24 and s.463)
- counselling a crime that is not committed (s.22(3) and s. 464)
- attempted murder (s. 239)
- conspiracy to commit an offence, conspiracy to commit murder, conspiracy with extraterritorial effects (ss. 465, 465(1)a), 465(3) and (4))
- counselling a crime that is committed (s.22(1))
- aiding or abetting (s.21(1)(b) and (c))
- unlawful purpose and commission of further offence (s.21(2))
- accessory after the fact (s. 23)
- accessory after the fact to murder (s. 240)

4.2 “Honour” as Motive

While motive is not something the Crown is required to prove, establishing a motive will invariably strengthen the Crown’s case. Juries will quite naturally seek an explanation for why a murder has occurred. This is particularly the case with crimes committed in the name of “honour”, where the events leading up to a murder may seem trivial compared to the actions of the accused. For instance, an average Canadian juror may have a difficult time accepting that a father or brother would murder his daughter or sister for wearing makeup or getting engaged without her father’s permission. Calling evidence to show that the accused viewed the victim’s actions as bringing dishonour to the family and that the crime was committed with the intent to restore the family’s honour, will assist the jury in understanding why the murder happened. Evidence of an honour motive may also assist a jury in accepting other testimony that they might otherwise have dismissed as exaggeration or miscommunication. Expert evidence about HBV can provide a framework for the jury to better assess and understand the evidence in the case.12

4.3 “Honour” and Premeditation

The concept of family honour may be relevant in homicide cases if it amounts to evidence of premeditation. Evidence of the accused’s intent to “cleans[e]” his honour or his

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12 In his decision to admit the evidence of Dr. Mojab, Justice Rutherford makes some useful comments about the relevance of her evidence to the issue of motive in R. v. Sadiqi, [2009] O.J. No. 2974, particularly at paras. 40 and 48.
family’s honour may be critical in decisions to lay manslaughter, first degree or second degree murder charges.

In *R. v. Sadiqi*, [2009] O.J. No. 2974, the Crown was successful in admitting out of court statements by the two victims prior to their deaths that provided context regarding motive, planning and deliberation. These out of court statements included an MSN chat-line exchange between one of the deceased and a close friend of the accused (the accused was the brother of one of the deceased). The exchange indicated that the friend of the accused tried to warn the victim that her brother wanted to kill her and her fiancé.
5. Civil Law

In addition to the criminal law, a number of interventions under the civil law may also be relevant in cases of FM and HBV. While not all of the remedies under the civil law implicate the police, it is important to be aware of these potential additional remedies.

5.1 Child Protection Law

In addition to criminal sanctions for FM and HBV cases, provincial and territorial child protection laws, providing for state intervention where parents or legal guardians are unable or unwilling to meet the child’s physical, emotional and psychological needs, may be relevant. This applies where the victim of the FM or HBV meets the age criterion for child protection intervention and, in some provinces and territories, where there are children in the home who were exposed to acts of family violence against other family members.

All Canadian provinces and territories have child protection legislation and all of these Acts contain a mandatory duty to report information with respect to a child who is in need of protection. The legislation in many jurisdictions expressly extends that duty to those who acquire the information in the course of their professional duties, including police officers, notwithstanding any another Act. Child protection authorities are responsible for conducting an investigation and determining an appropriate response in the best interest of the child, with police involvement where a crime is suspected.

Where criminal charges are laid for an act involving child abuse are laid, child protection responses will also be triggered. Most provinces and territories have protocols for cases involving both police and child welfare officials.

Some forms of HBV or FM against children and youth that fall short of the criminal threshold may still trigger responses under provincial/territorial child protection legislation (for example, some forms of psychological abuse or neglect). Each jurisdiction sets out its own parameters for defining child abuse and neglect. Most Acts expressly refer to emotional harm as grounds for protection, and some jurisdictions (Ontario and Manitoba) include the risk of emotional harm in their definition. Most Acts also include exposure to family violence.

The age at which child protection legislation ceases to apply also varies depending on the jurisdiction. In approximately half of Canadian provinces and territories, it is the same age as the age of majority for the jurisdiction, and in the remainder it is lower. The following lists the ages of majority and child protection for Canadian jurisdictions:

**Alberta**

- Age of majority: 18 *(Age of Majority Act, R.S.A. 2000, c. A-6, s. 1.)*
- Child protection: 18 *(Child, Youth and Family Enhancement Act, R.S.A. 2000, c. C-12.)*
<table>
<thead>
<tr>
<th>Province</th>
<th>Age of majority</th>
<th>Child protection</th>
</tr>
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<tbody>
<tr>
<td>British Columbia</td>
<td>19 (Age of Majority Act, R.S.B.C. 1996, c. 7, s.1)</td>
<td>19 (Child, Family and Community Service Act, R.S.B.C. 1996, c. 46.)</td>
</tr>
<tr>
<td>Manitoba</td>
<td>18 (The Age of Majority Act, C.C.S.M. c. A7, s. 1.)</td>
<td>18 (Child and Family Services Act, C.C.S.M. c. C80.)</td>
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<tr>
<td>New Brunswick</td>
<td>19 (Age of Majority Act, RSNB 2011, c 103, s. 1(1).)</td>
<td>16 (Family Services Act, S.N.B. 1980, c. F-2.2; disabled children under 19 years of age)</td>
</tr>
<tr>
<td>Newfoundland &amp; Labrador</td>
<td>19 (Age of Majority Act, S.N.L. 1995, c. A-4.2, s.2.)</td>
<td>18 (Children and Youth Care and Protection Act, SNL 2010, c C-12.2; for protective intervention purposes)</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>19 (Age of Majority Act, R.S.N.S. 1989, c. 4, s. 2 (1).)</td>
<td>16 (Children and Family Services Act, S.N.S. 1990, c. 5; special needs children under 19 years of age)</td>
</tr>
<tr>
<td>Ontario</td>
<td>18 (Age of Majority and Accountability Act, R.S.O. 1990, c. A.7, s.I.)</td>
<td>16 (Child and Family Services Act, R.S.O. 1990, c. C.11.)</td>
</tr>
<tr>
<td>Quebec</td>
<td>18 (Civil Code of Québec, R.S.Q. c. C-1991, art. 153.)</td>
<td>18 (Youth Protection Act, R.S.Q., c. P-34.1.)</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>18 (Age of Majority Act, R.S.S. 1978, c. A-6., s. 2(1).)</td>
<td>18 (Child and Family Services Act, S.S. 1989-90, c. C-7.2; for protective intervention purposes)</td>
</tr>
</tbody>
</table>
Yukon
Age of majority: 19 (Age of Majority Act, R.S.Y. 2002, c. 2, s. 1(1).)
Child protection: 19 (Child and Family Services Act, S.Y. 2008, c. 1, s 1.)

Apprehension of a child

In most provinces and territories, a protection application begins with a court order or a warrant where there are reasonable grounds to believe a child is in need of protection. Depending on the circumstances and the jurisdiction, the order or warrant may permit the police to enter premises to search for the child, to require disclosure of the child’s whereabouts, to have the child medically examined or interviewed, and/or to apprehend the child and bring them to a place of safety. In some jurisdictions, a no contact order may be obtained where there are reasonable grounds to believe that contact with a person would cause the child to be in need of protection.

Most provincial and territorial child protection laws also allow for the apprehension of a child without a court order or warrant under specific circumstances. For instance, in Alberta, a child may be apprehended without an order if a child’s life or health is seriously and imminently endangered because the child has been abandoned. Often, the legislation allows either a peace officer or a child protection official to proceed in this manner, but in some jurisdictions it is only a child protection worker who is authorized to apprehend a child without a warrant or court order. However, generally a peace officer will assist in the apprehension of a child.

Dispositions by court where child in need of protection

Although the terminology varies in each jurisdiction, in most provinces and territories a court may make one of the following orders in the child’s best interest where the child is found to be in need of protection:

- supervision order (child returns to parent with supervision by child protection services);
- temporary guardianship order (child placed in the care of child protection services for a defined period of time);
- permanent guardianship order (child permanently placed in the care of child protection services); or
- placement with another person (child placed with a person having an interest in the child, e.g. a grandparent, with or without supervision by child protection services).

Most provincial and territorial laws also provide for some type of voluntary assistance to families, and in some jurisdictions it is mandatory to attempt voluntary services before seeking a court order to protect a child (e.g. Ontario).
When dealing with cases of HBV or FM, an additional consideration is whether other children, for example younger siblings, may also be involved or at risk, which could necessitate the involvement of child protection authorities.

5.2 Civil Protection and Restraining Orders

In addition to criminal protection orders (discussed in subsection 6.6), civil protection orders may also be relevant for the victim. Such orders are available either through the common law, as general injunctive relief or under specific legislation. Where the orders are under specific legislation, they may or may not be applicable to victims of FM and HBV, depending on their relationship to the defendant. For example, no-contact or restraining orders in the context of family law legislation will only apply as between spouses and similar orders under child protection will only apply to children under the ages of child protection for the jurisdiction.

The superior courts have inherent jurisdiction to grant injunctive relief, including restraining orders. Many applications for restraining orders may be brought on an ex parte basis and these orders can apply in situations other than the spousal violence or family law context.

Restraining or no-contact orders are also available under provincial or territorial family law if the victim is undergoing a separation or divorce. In addition, most provincial and territorial child protection laws state that an application for an order not to contact a child (i.e. restraining or no-contact order) can be made if contact between a child and another person would cause the child to be in need of protection.

Moreover, emergency protection orders or emergency intervention orders are available in most provinces and territories under specific civil family violence or domestic violence legislation. They can grant the victim temporary exclusive occupation of the home, remove the abuser from the home, set limits on contact and communication with the victim and other remedies. Although the application of these orders varies depending on the jurisdiction, these orders are primarily applied between spouses. The following sets out the relevant family violence legislation:

- Alberta: Protection Against Family Violence Act, R.S.A. 2000, c. P-27
- Saskatchewan: Victims of Domestic Violence Act, S.S. 1994, c. V-6.02
- Nova Scotia: Domestic Violence Intervention Act, S.N.S. 2001, c. 29
- Nunavut: Family Abuse Intervention Act, S.Nu. 2006, c. 18

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• The Yukon: *Family Violence Prevention Act*, R.S.Y. 2002, c. 84

Unless a specific remedy for a breach of the civil restraining or protection order is set out in the legislation, a breach can result in an offence under section 127 of the *Criminal Code*. In all potential HBV situations, it is important that any civil restraining or protection orders also be registered on the Canadian Police Information Centre (CPIC) system or any provincial or territorial equivalent if possible.

**5.3 Family and Marriage Law**

A marriage between two individuals confers a legal status on them, and makes them subject to laws that provide for their rights and obligations toward one other. In order for a marriage to be legally valid, both parties to the marriage must give their free and informed consent to the marriage. However, even where one or both parties did not consent, the marriage will remain legally valid until it is “annulled” by a court of law on the application of one or both parties. The person seeking the annulment has the onus of proving that the marriage was procured by duress. A third party, such as the government, cannot intervene to have the marriage declared void.

Religious annulments may also be provided by some religious faiths - such as Roman Catholic, Jewish and Muslim faiths - but these have no impact on the legality of the marriage. A victim of FM will have to seek legal advice to proceed with an application for a legal court order of annulment.

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6. Tips for Police

The following subsections offer some practical information for police officers where they suspect that a crime has been or may be committed in the name of “honour” or in relation to a FM. Much of the information in these subsections is based on UK training material for police: 15

6.1 Initial Police Response

In response to an initial call involving HBV or FM, police may need to take into consideration additional factors to those usually considered in responding to family violence matters. For instance, some police actions that may be considered usual practice could inadvertently increase the risk to the victim because the actions may be perceived to further damage victim’s “honour”. This could include situations where a male officer takes a female victim into a separate room within the family home on their own or situations where a missing person is returned to their family home. Police may wish to note the following:

- At the earliest moment possible, it will be very important to speak to the potential victim alone in a confidential setting - even if they decline the need while in front of the alleged offenders - or with a support person they choose and trust, and to reassure them of police confidentiality.
- Similarly, if police are called to a family home, UK training materials recommend bringing the potential victim to the police station to be interviewed without the presence of family members (particularly parents or male relatives).
- If the person needs an interpreter, the person should agree to the choice of interpreter before their identity is revealed to that person, to avoid accidentally increasing the danger to them by using family or community members. The same is true with accessing community contacts.
- It would be helpful to gather information about the “family tree”, both immediate and extended family, in order to anticipate potential threats.
- It would be very helpful if the victim has a way to contact you discreetly in the future.
- The victim will likely need personal safety advice, including a referral to local counselling services and shelters. There may be some domestic violence services that have a special understanding of HBV and FM. The victim might benefit greatly from contacting such organisations.
- Male victims may have even greater difficulty seeking help or finding appropriate services. They too will need a safety plan and resources where they can get help.

Matters relating to HBV and FM may involve offences such as uttering threats, assault, and forcible confinement, but the risk of escalation of violence may be greater and faster than in other situations involving similar offences.

The local child protection agencies can assist with victims who fall within child protection age based on the given jurisdiction. They may or may not be aware of HBV or FM and may need your help to better understand the situation.

There may be a risk that the person may be forcibly removed from the country for a FM or to be subject to HBV.

Where there are grounds to believe that someone will be entering Canada to commit a crime related to HBV or FM, the Canada Border Services Agency (CBSA) should be informed.

The UK experience has also identified a number of cautionary points to consider:

- To avoid treating such allegations as a simple “family problem” rather than police matters, and sending the victim away in the belief that her parents will not harm her. A similar case in the UK resulted in a high-profile HBV murder of the child taken back to her home by police, who left after receiving assurances from the parents.
- To avoid assuming that the complainant wants to speak to a law enforcement officer or interpreter from their community. A similar case in the UK lead to increased risk for the victim.
- To avoid attempts to mediate with the family. This can exacerbate the situation of the victim, if the family perceives that he or she has shared an honour-related issue with those outside the family.

During the investigation of HBV and FM, police should be cognizant that their actions and contacts with other members of the family and community may inadvertently further endanger the victim.

Family members might also assure police that the child is behaving unreasonably and that this is merely “teenage rebellion” or “acting out”, or may even make false allegations that the victim has committed a crime in an attempt to use the police to locate the victim and return them to the family from which they escaped.

6.2 Particular Factors for Risk Assessment

In assessing the nature and level of risk to the safety of the individual, it may be useful to add the following particular considerations to the applicable domestic violence or child abuse risk assessment factors:

- Has the complainant reported receiving direct or indirect threats of serious physical harm or death?
- Has the complainant reported that their family has previously used or expressed their approval of HBV or the use of force to ensure compliance with an arranged marriage?
- Has the complainant reported that his or her parents strongly oppose the complainant’s dress, behaviour or friends?
Does the complainant have a boyfriend/girlfriend that they have not divulged to their family, or that is unacceptable to their family?

Is the complainant already secretly married?

Is the complainant in an inter-faith relationship?

Is the complainant pregnant?

If the complainant is married, are they seeking a divorce?

Does the complainant have severely restricted freedom? (e.g. are there family members who constantly “accompany” them to class, to work, or wherever they go? do they neither possess a cellular telephone nor have Internet access?)

Has the complainant ceased to practise the family religion?

Has the complainant refused an arranged marriage?

Have other family members (usually female siblings) run away or committed suicide in order to avoid a FM or further HBV?

Have other siblings been forced to marry?

Is there a risk that the family might take the complainant out of the country?

Are any other family members at risk of FM or HBV (e.g. female siblings)?

As in other domestic violence cases, it is helpful to advise the victim to develop a safety plan. Victims could also be advised to change their cell phones to avoid being tracked by family members. Victims could also be asked to hand over their passports for safekeeping to avoid being taken out of the country against their will. It is advisable to verify if the victim holds more than one nationality and passport.

6.3 Evidence Collection

As in the case of all family violence investigations, complainants of FM and HBV may be reluctant or too afraid to testify against the perpetrator. In anticipation of any possible victim recantation, police may wish to collect sworn statements or KGB evidence.\(^\text{16}\)

In addition to the usual collection of evidence (e.g. videotaping or photographing the crime scene and gathering weapons, physical, and fingerprint evidence), it might be particularly pertinent to gather any voice-mail or hard copies of e-mail messages, Google searches, video recordings, photos or written information related to the victim’s behaviour (that may be perceived to dishonour the family). Similarly, it may be useful to review and preserve 911 audiotapes.

\(^{16}\) KGB evidence is based on the Supreme Court of Canada decision in R. v. B. (K.G.), [1993] 1 S.C.R. 740, which set out a new hearsay exception to the common law rule that a prior inconsistent statement by a non-party witness is not admissible unless confirmed by the witness (R. v. Deacon (1947), 3 CR 265 (SCC)). The hearsay exception allows prior inconsistent statements to be admitted for their truth on a case-by-case basis if the following safeguards are met:

1) the statement be under oath or solemn affirmation following a warning on false statements;
2) the entire statement is videotaped; and
3) the opposing party has an opportunity to cross-examine the witness regarding the statement.
It may also be advisable to get the victim’s consent to photograph the victim’s injuries both at the time of initial police contact and then subsequently 24-48 hours after the occurrence as the injuries may become significantly more apparent (ideally by a member of the same gender). It would also be useful to obtain consent from the victim for access to medical information related to the incident.

In addition, in cases involving victims or witnesses either under 18 years of the age or who have difficulties communicating due to a physical or mental disability, sections 715.1 and 718.2 of the *Criminal Code* allow for the admission of video-recorded statements if the statements were made within a reasonable time after the alleged offence, the witness is available for cross-examination and using the video statement would not interfere with the proper administration of justice.

### 6.4 Interception, Warrants and Seizure of Property

Since HBV and FM cases often implicate multiple offenders and are planned in advance, valuable evidence may be obtained through interception or search and seizure warrants. In addition, surveillance may assist in preventing an offence. A number of criminal provisions and orders may be relevant in HBV and FM cases, including:

- lawful authorization to intercept private communications (Part VI)
- search warrant – to search and seize evidence (s. 487)
- Computer warrant – search warrant to operate and retrieve data from computers (s. 487(2.1))
- general warrant – to conduct video surveillance or for the use of other investigative techniques not otherwise provided under warrant (s. 487.01)
- DNA warrant – to obtain sample of bodily substance for DNA analysis (s. 487.05)
- tracking warrant – to install, maintain and remove tracking devices and monitor movements of the device (s. 492.1)
- DNR warrant – to install maintain and remove a telephone number recorder and to monitor the number recorder (s. 492.2)
- bodily impression warrant – to obtain print or impression of the body (s. 487.092)
- production orders – to compel the production of relevant information from third parties (s.487.012)
- warrant to arrest and warrant to enter dwelling-houses (ss. 529 to 529.5)

In certain circumstances, *Criminal Code* warrants and production orders can also be obtained by telewarrant (e.g. by telephone or fax). Assistance orders to execute warrants must also be obtained if law enforcement believes that special assistance from 3rd parties may be required (e.g. forensic, IT etc.). Where exigent circumstances are present, law enforcement are authorized to act without the required warrant. Exigent circumstances generally refers to the imminent loss or destruction of evidence or imminent bodily harm to a person.
Warrants may require backing to be executed outside the territorial jurisdiction within Canada (s. 487(2)). Relevant evidence may be available in a foreign jurisdiction (e.g. Internet Service Provider information). Where assistance is not available on a police to police basis, requests for assistance may be submitted to the International Assistance Group (IAG) of the Department of Justice. As Canada’s central authority for mutual legal assistance in criminal matters, the IAG reviews and coordinates mutual legal assistance requests made to Canada, as well as those made by Canada to other countries. Please contact the IAG for further information regarding the mutual legal assistance process.

6.5 Mandatory or Pro-Charge Policies

Where an HBV related call is made involving conjugal partners, the mandatory or pro-charge spousal abuse or domestic violence policies will apply. Since the mid-1980s the Attorneys General and Solicitors General of all Canadian jurisdictions have issued directives or guidelines to police and Crown prosecutors with respect to spousal abuse cases. While the form and content of these directives varies considerably, they share essentially the same objective—namely, to ensure that spousal assaults were treated as a criminal matter. Police policies generally required them to lay charges where there were reasonable grounds to believe that an assault had taken place.17

6.6 Protective Orders or Conditions

Criminal protection orders may be relevant in cases of actual or threatened criminal conduct in the context of HBV or FM. Generally, these protective orders arise in the context of:

- release, no-contact or bail orders (s.515);
- orders pending trial or appeal (s.519);
- recognizance orders or peace bonds (s.810); or
- probation orders following conviction (s.731).

It may be worthwhile to speak with the Crown prosecutor to ask for a three day remand (s. 516) to allow for more time for the police to investigate and provide the court with more evidence concerning the nature of the risk posed by the accused. In cases of HBV and FM involving complainants under the age of eighteen, it may be worthwhile for the Crown prosecutor to request detention under s. 515(10)(b). It may be advisable to ensure that non-communication orders are in place whether the accused is in custody (ss. 515(12) or 516(2)) or released on bail (s. 515(1) or (2)). Consider asking that the accused also be prevented from communicating with other family members in addition to the victim. It may also be advisable to ask for a publication ban under s.517 if there is a bail hearing.

6.7 Secure Identity Change

In the event that a risk assessment has indicated that the victim of a FM or HBV is at high risk of being seriously injured or killed, it may be advisable to explore the possibility of a secure identity change. Contact the Confidential Services for Victims of Abuse (CSVA) within the relevant jurisdiction or federally, through Service Canada, for more information.
7. International Dimensions

As noted above, HBV and FM cases can have an international component. There are anecdotal reports of Canadian citizens being forced into marriage abroad without prior knowledge or consent. Forced marriages of Canadians are alleged to have occurred in a number of countries, including Afghanistan, Algeria, Bangladesh, Egypt, Ethiopia, India, Libya, Morocco, Pakistan, Somalia and Sudan. Likewise, there have been reports of Canadians taken abroad and subjected to “honour” killings as well as members of the extended family coming to Canada to kidnap or kill a Canadian family member believed to have shamed the family.

7.1 Missing or Abducted Minors

The Canadian Police Centre for Missing and Exploited Children is comprised of two distinct Centres of expertise: the National Child Exploitation Coordination Centre (NCECC) and the National Centre for Missing Persons and Unidentified Remains (NCMPUR). These Centres work together to provide investigative assistance to local, municipal, regional, national and international policing partners. The NCECC was created in response to Internet-facilitated child sexual exploitation.

The NCMPUR, which is under development, currently houses National Missing Children Operations (formerly known as National Missing Children Services) which remains a service created to assist law enforcement agencies in the investigation, location, and safe return of a missing child. In cases where a minor has gone missing, National Missing Children Operations, which operates as Canada's national clearinghouse for missing children, may be useful. This unit is linked to all Canadian police and related agencies through the Canadian Police Information Centre (CPIC), U.S. police agencies through the National Crime Information Centre (NCIC), and most foreign police agencies through Interpol.

7.2 Canada Border Services Agency

In cases where information has been gathered to substantiate grounds to believe that a subject of interest who may be involved or associated with HBV will be entering Canada to commit HBV, the Canada Border Services Agency (CBSA) should be informed by calling the Duty officer phone at 613-957-8397. The officer on duty will refer the information to the appropriate area to be further assessed and where appropriate actioned.

7.3 Services Available to Canadians Abroad

Canadian citizens may utilize services offered abroad by the Department of Foreign Affairs and International Trade (DFAIT). It is important to encourage individuals who are fearful of possible FM or HBV to register with the Department of Foreign Affairs and International Trade (DFAIT) before leaving the country. DFAIT offers a registration service to all Canadian citizens living or traveling abroad. DFAIT can assist the
individual in the case of an emergency, such as a natural disaster or civil unrest, or inform them of a family emergency at home.

The Department of Justice also operates an emergency fund for Canadians who are victimized abroad either through homicide, sexual assault, aggravated assault or assault with serious personal violence, including against a child. This emergency financial assistance is available through the Victims Fund, which is administered by the Department of Justice Policy Centre for Victim Issues (PCVI). The Victims Fund may help cover the following expenses, where the victim has no other source of financial assistance, up to a maximum of $5,000 (not including travel costs):

- travel expenses to return to the country where the crime occurred in order to attend/or testify at the preliminary hearing and/or the trial or equivalent process;
- travel expenses for a support person to be with a Canadian victimized abroad, during the immediate aftermath of the crime;
- expenses for a Canadian victim of crime to return to Canada;
- out-of-pocket expenses due to being a victim of a violent crime; and
- upon return to the victim’s home province or territory, financial assistance for professional counselling.

Consular officials can provide Canadians abroad with a list of local lawyers, shelters, and social services that can help. Canadians travelling abroad who require assistance should contact the nearest Canadian government office abroad or the Emergency Operations Centre by calling 1-800-267-6788 (in North America) or making a collect call (where available) to 613-996-8885.
8. Canadian Cases

8.1 “Honour” Based Killings

A review of what appear to be “honour killing” cases in Canada demonstrates that these cases have been treated seriously by the courts. With the exception of a manslaughter verdict in *R v. Jack*, in every other case, convictions were entered for first or second degree murder, which carry a mandatory life sentence. Parole ineligibility periods were set at 14, 16 and 18 years in the second degree murder cases, well above the minimum of ten years. First-degree murder automatically carries a parole ineligibility period of 25 years. In no case did the court accept family honour as a mitigating factor.\(^\text{18}\)

The following examples were gleaned from reported case law and media reports in which there was an indication that the concept of honour may have played a role in the killings or been raised by the accused as a justification or partial excuse for the killings. This list is not exhaustive, but may provide examples of the circumstances leading to “honour” based killings and how they have been dealt with by the courts.


On January 29, 2012 husband and wife Mohammad Shafia and Tooba Mohammad Yahya and their oldest son Hamed Shafia were found guilty of first-degree murder in the deaths of sisters Zainab, Sahar and Geeti, aged 19, 17 and 13, and of Mr. Shafia’s other wife, Rona Amir Mohammad. Although the family resided in Montreal, the four bodies were found in a submerged car at a Rideau Canal locks east of Kingston on June 30, 2009. Evidence at trial portrayed a household in which the daughters’ behaviour and sexual expression was tightly controlled, and in which their romantic choices and defiance represented shame and dishonour for Mr. Shafia and the family. Wiretap records taken during the police investigation following the four deaths captured Mr. Shafia cursing his deceased daughters as "whores," "prostitutes," and "honourless girls."

Despite the three daughters’ efforts to reach out to police and social services, evidence that Ms. Amir believed her life to be at risk and an explicit request by the youngest daughter, Geeti, to be removed from the home, there was no determination by authorities that the victims were in need of protection.

During sentencing on January 29, 2012, Judge Maranger attributed the murders to a “twisted notion of honour, a notion of honour that is founded upon the domination and control of women” and imposed the mandatory sentences of life in prison with no chance of parole for 25 years.

\(^{18}\) For a fuller discussion of Canadian cases, please see Marie-Pierre Robert, « Les crimes d’honneur ou le déshonneur du crime: étude des cas canadiens » (2009) 16 C.C.L.R. 49)

In June 2010, Kamkar Singh Dhillon pled guilty to second-degree murder in the killing of his daughter-in-law, Amandeep Kaur Dhillon. On January 1, 2009, 22-year-old Amandeep was fatally stabbed in the basement of a Mississauga grocery store. Her father-in-law was also found at the scene of the crime with stab wounds which he claimed were caused by the victim. These were later found to have been self-inflicted and he was charged with first-degree murder. He was sentenced to life imprisonment with no chance of parole for 15 years. He told investigators he was justified in killing Amandeep because she was going to dishonour their family by leaving his son for another man.


In June 2010, Muhammad Parvez, and his son, Waqas, pled guilty to the second-degree murder death of 16-year-old Aqsa Parvez. Aqsa’s father and brother were charged with first-degree murder after she was found strangled in her family’s Mississauga home in December 2007. Friends said that Aqsa was experiencing conflict with her family due to her refusal to wear the hijab, the Islamic headscarf worn by some Muslim women. In order to spend less time at home, she had been staying with another family who described her as a “typical” teenager trying to fit in. She was reportedly attempting to repair her strained relationship with her family prior to her killing.


**R v. Sadiqi** [2011] O.J. No. 1229 (ONCA) (Motion by the accused for an order appointing state-funded counsel to represent him on his appeal. The court accepted that Mr. Sadiqi’s grounds of appeal – the first relating to the admissibility of the expert testimony, and the second relating to jury instructions – were sufficiently arguable, and the case sufficiently complex to warrant the appointment of public counsel.)

In 2006, Hasibullah Sadiqi was charged with the first degree murder of his sister, Khatera, and her fiancé Feroz Mangal. The Sadiqi and Mangal families were both from Afghanistan but the Sadiqis are Tajik, while the Mangals are Pashtun. Khatera had become engaged to Feroz without the prior approval of her father, which was contrary to the cultural norms of their background. Hasibullah believed the couple’s engagement would cast dishonour or disrespect upon the family. He arranged to meet his sister and her fiancé in a shopping mall parking lot, where he shot and killed them both. On May 31, 2009, Sadiqi was convicted of two counts of first degree murder and was sentenced to life imprisonment with no eligibility for parole for 25 years.

In 2009, Sugirthanraj Kailayapillai was sentenced for a conviction of second degree murder to life imprisonment with parole ineligibility for 14 years for the 2006 killing of his wife, Ms. Subramaniam. Kailayapillai had hung her body in the garage and sent his four-year-old daughter and his mother-in-law to the garage to discover the body. The accused claimed that his wife was “of bad character” because she had developed a romantic relationship with someone with whom she worked. In their victim impact statements, the victim’s mother and sister stated at paragraph 18 that:

…members of the Tamil community, a community that Ms. Sivanantham [the victim’s sister] describes as holding, “some very rigid and traditional values and norms when it comes to women”, have suggested that Ms. Subramanian was murdered because she was of bad character. This has brought shame to the family, and causes its members, particularly Kanagama [the victim’s mother], to feel isolated from their community. They worry that Ms. Subramaniam’s children will be ostracized.


This was an unsuccessful application by Mr. Dulay to reduce his term of parole ineligibility for murder based on his change in attitude toward the cultural justification of the murders he committed. In 1991, Daljit Singh Dulay killed his younger sister, Kalwinder Dulay, her husband, Gurdawr Dulay, and the man they lived with in Calgary, Mukesh Sharma. Mr. Dulay indicated that his family had disapproved of his sister’s marriage and that, as the eldest son, he was responsible for cleansing the family honour by killing them. He was convicted of two counts of first degree murder and one count of second degree murder. He received the mandatory life sentence with parole ineligibility for 25 years on the first degree murder convictions, and a life sentence with parole ineligibility set at 18 years for the second degree murder conviction.


This is an appeal by the Crown from a three year prison sentence imposed upon Mr. Kevin Jack after he pled guilty to manslaughter in the death of Gordon Thomas. Mr. Thomas had a history of violence towards his spouse, Georgina Canute, and had humiliated Ms. Canute publicly. Mr. Jack's girlfriend was a member of Ms. Canute’s extended family. While severely intoxicated, Mr. Jack, his girlfriend and her sister decided that Mr. Thomas should be beaten in order to restore honour to the family. With the help of the two sisters, Mr. Jack attacked Mr. Thomas, resulting in his death. The sentencing judge made reference to Mr. Jack’s Cowichan background when concluding that it was his dysfunctional attitude towards alcohol and violence “together with a dysfunctional notion of how to preserve family honour that contributed to, if it was not the cause of, these young people to [sic] becoming involved in the events leading to the death of Mr. Thomas.”
The Court of Appeal disagreed with the Crown that the relatively low sentence reflected an acceptance of the preservation of family honour as a mitigating circumstance for aboriginal offenders. While the sentencing judge “recognized the need to dissuade young people from answering violence with violence,” the decision properly took into consideration the context and circumstances of Mr. Jack and his community, according to the principles outlined by the Supreme Court in *Gladue*.


In 2006, the Supreme Court of Canada refused an appeal from Adi Abdul Humaid of his conviction for first degree murder in the death of his wife in 1999. Mr. Humaid claimed that his wife's insinuations of infidelity caused him to lose control because of the significance of female infidelity in Islamic religion and culture.

The Appeal court stated at paragraph 93 that:

> The difficult problem, as I see it, is that the alleged beliefs which give the insult added gravity are premised on the notion that women are inferior to men and that violence against women is in some circumstances accepted, if not encouraged. These beliefs are antithetical to fundamental Canadian values, including gender equality. It is arguable that as a matter of criminal law policy, the "ordinary person" cannot be fixed with beliefs that are irreconcilable with fundamental Canadian values. Criminal law may simply not accept that a belief system which is contrary to those fundamental values should somehow provide the basis for a partial defence to murder.

The Court went on to find at paragraph 86 that “(p)rovocation does not shield an accused who has not lost self-control, but has instead acted out of a sense of revenge or a culturally driven sense of the appropriate response to someone else's misconduct.”


Mr. Atwal was convicted of second degree murder for killing his 17 year old daughter, Amandeep, who had become romantically involved with a boy her age, Todd McIsaac. The accused strongly disapproved of the relationship and when he found out that his daughter had been in a car accident, he told her that she was a disgrace to the family and that he wished her dead. Upon learning that Amandeep was planning to move in with her boyfriend in 2003, the accused offered to drive his daughter to join her boyfriend and his family on vacation. During the trip, the accused stabbed his daughter 17 times with a large knife then drove for two and a half hours past hospitals and police stations with the body of his deceased daughter at the foot of the passenger seat. When he arrived at a hospital, he claimed his daughter had committed suicide.

Although there was no specific mention in the case of "family honour", Mr. Atwal had indicated that her relationship had disgraced the family. Family, both immediate and
extended, continued to support the accused. The Court sentenced Mr. Atwal to life imprisonment with no possibility of parole for 16 years.


Mr. Kandola appealed his conviction for manslaughter for the killing of Mr. Sandhu. Mr. Kandola had developed a "close but chaste" relationship with Ms. Mahli, who was married. Mr. Sandhu, Ms. Mahli's father, found out about the friendship and was determined to "redress his family's loss of honour". The Kandola family sought a peaceful solution and offered $5,000 to compensate for the shame, which was refused. Mr. Sandhu and friends continually threatened the Kandola family, including a threat to rape all the female members of the family. Following the threat of rape, the Kandola household called the police and Mr. Kandola brought out the gun he had purchased illegally for self-defence. The police did not attend and when a car of attackers arrived, Mr. Kandola shot a warning shot from his window and accidentally killed Mr. Sandhu.

The appellant's self-defence claim was successful. The conviction was set aside and a verdict of acquittal was entered.


Mr. Ly appealed his conviction for the second degree murder of his wife on the ground that the cultural background of the accused was not taken into consideration in the "ordinary person" test of the defence of provocation. This decision pre-dates *R. v. Thibert* and is therefore only included here for the fact scenario.

Mr. Ly, originally from Vietnam, became suspicious that his wife was having an extramarital affair. He became enraged when she refused to tell him where she had been one evening and his feelings of rage were fuelled by the cultural significance of "losing face" and "honour" should female infidelity arise and be discovered by members of his community.

The appeal was dismissed.


The B.C. Court of Appeal upheld the convictions of Santa Singh Tatlay and James Wilbrod Lewis for the first degree murders of Mr. Tatley's daughter Parmjeet H. Sidhu and her husband Gurmail Singh Sidhu. Mr. Tatlay had been very seriously affected when his daughter left his home without his consent and married Gurmail without his approval. He arranged with Lewis for the conversion of an electric kettle into a bomb which was mailed to the newlyweds, and which exploded upon use, killing the couple. Both Mr. Tatlay and Mr. Lewis were sentenced to life in prison.

Mr. Tripodi appealed his conviction for murder by raising the defence of provocation. He had emigrated from Italy leaving his wife and children behind. He was informed that his wife had been unfaithful to him while he was in Canada. He strangled his wife a few days after her arrival in Canada. The appeal was dismissed. There was no air of reality to the provocation defence since the killing was not "on the sudden" and he had deliberately decided to kill his wife "to avenge his family honour".

8.2 Non Fatal “Honour” Based Crimes

The following are a few Canadian examples of non-fatal cases in which the notion of “honour” was put forward as a motive for violence.


In December 2009, Yusuf Al Mezel pleaded guilty to criminal harassment and was sentenced to 12 months in prison for threatening his daughter Eman, 25, with honour-based violence. Eman had reportedly abandoned her religious beliefs and had refused to go through with an arranged marriage. Her father repeatedly called, wrote, followed her and visited her residences in an attempt to convince her to return home. Eman was subsequently relocated by police and has had no further contact with her family.


In 2007, Selvanayagam Selladurai attempted to kill his daughter and her boyfriend by running them down with his car and dragging them five meters into a nearby fence. He was motivated by his disapproval of his daughter’s boyfriend, who was of a lower Sri Lankan caste. The attack came days after his daughter left home due to a dispute about her boyfriend. Her sister called and arranged a meeting to reconcile the victim and her father; it was at this arranged meeting that her father attacked the couple. Selladurai’s son-in-law was also injured in the attack. Selladurai was originally charged with three counts of attempted murder, but ultimately pleaded guilty to three counts of aggravated assault. In 2010, he was sentenced to five years in prison. In delivering his sentence, Justice John McMahon stated, “Cultural differences can never be used as an excuse to justify criminal acts in Canada…This court cannot condone people resorting to violent criminal actions against family members because it would bring shame to the family.”

8.3 Forced Marriage

There are no known criminal cases in Canada dealing specifically with forced marriage. The following cases are drawn from applications for annulment to illustrate some of the principles that the courts use to determine whether consent to marry has been given.

The plaintiff was told by her mother and brother that she had no option but to proceed with an arranged marriage. She repeatedly told family and friends that she did not wish to proceed with the marriage. The marriage ceremony took place and the registration of marriage was signed but the marriage was never consummated and the couple did not live together. The judge accepted that the plaintiff was subjected to great pressure from her family and that refusing to go through with the marriage could have resulted in alienation from her family. However, he found that her allegations of fear did not go far enough to be considered duress but that at most the alternatives to marriage would have been unpleasant for her.

At paragraph 13, the judge contrasted the facts in this case to those in *Parojcic v. Parojcic*, (1959) 1 A.E.R., by citing the following passage:

> The father was always insisting that the petitioner should marry the respondent and the petitioner was constantly refusing. On more than one occasion, as he himself admits, he threatened her that if she persisted in her refusal he would send her back to Yugoslavia. Whether he could have done so or not, both of them believed it was possible, and the threat not unnaturally after her past experience terrified the petitioner. She told her father that she would rather commit suicide than return to Yugoslavia. There is no doubt that during this period of six weeks the petitioner was very unhappy and constantly crying, as also was her mother who was equally opposed to the match. Finally on the day before the wedding her father hit her in the course of an argument about the matter, no doubt when he was telling her that she must go to Oxford on the following day. On this evidence, which I accept, there is no doubt that this young woman was terrified into obedience by her father who was almost a stranger to her after years of separation and who may well have been imbued with ideas of patria protests which were fundamentally foreign to his daughter. (...) I am quite satisfied in accordance with that, and the other authorities, that this petitioner has shown that she never in fact consented to this marriage and she was driven to go through the ceremony by the terror instilled in her by the threats exercised and made to her by her father in the course of the six weeks preceding the marriage; indeed, the only six weeks of her life that she had spent in this country.


The applicant was married at the age of 16 in Ontario with her mother's consent. Her mother and stepfather received $500 for arranging the marriage in order to facilitate her husband's immigration. The applicant alleged that her mother and stepfather pressured her into the marriage. She never lived with her husband nor consummated the marriage. She applied for an annulment, or in the alternative, a divorce.

With respect to duress, the judge stated at paragraph 27:
27. A valid marriage is grounded upon the consent of each party. Oppression may vitiate consent, and if there is no consent, there is no valid marriage. Different people may respond to oppression in different ways, and conduct that may overmaster the mind of one person may not have this impact upon the mind of another. It matters not, therefore, whether the will of a person of reasonable fortitude would -- or would not -- have been overborne: the issue is, rather, the state of mind of the applicant. To constitute duress, it must be established that the applicant's mind was so overcome by oppression that there was an absence of free choice. The point that falls for decision is whether the consent given at the time of the ceremony was a real, understanding, and voluntary consent. Oppression can take various forms: it may be generated by fear, or by persuasion or pressure. Essentially, the matter is one of degree, and this raises a question of fact for the court. The determination involves a consideration of all relevant circumstances, including the age of the applicant, the maturity of the applicant, the applicant's emotional state and vulnerability, the lapse of time between the conduct alleged as duress and the marriage ceremony, whether the marriage was consummated, whether the parties resided together as man and wife, and, the lapse of time between the marriage ceremony and the institution of the annulment proceeding. As long as the oppression affects the mind of the applicant in the fashion stated, physical force is not required, and, no more so, is the threat of such force a necessary ingredient. Nor is the source of the conduct material. Where duress is alleged, the onus of proof is upon the party seeking annulment, and it is an onus that is not lightly discharged.

The judge held that the applicant had discharged the onus of proof and was entitled to a declaration of nullity.
9. International Cases

This section provides a selection of recent high profile cases that took place in countries that do not accept a defence of family honour as a mitigating factor to charges of assault or homicide. These may be of assistance in identifying recurrent fact patterns in HBV and FM cases.

United Kingdom:

1. In December, 2011, the UK High Court ruled that a baby girl born out of wedlock must be adopted to save her from being harmed in the name of family honour. Three judges agreed that if the unmarried Muslim woman’s father found out about the child, he would feel such ‘unimaginable shame’ that it could lead to violent reprisals for the baby and the rest of the family. They ordered the adoption for the baby’s own safety. With the help of her mother and a sister, the biological mother had successfully concealed the pregnancy from the rest of the family and arranged for the adoption of the newborn. The court case came about because the baby’s natural father discovered that he had a daughter and made a claim for custody. In an extraordinary decision, the High Court rejected his request because it would have become very difficult to conceal the baby’s origins to the wider community, creating a significant risk that the baby’s maternal grandfather might launch a violent attack to preserve the family’s honour.

2. Samaria Nazir, 25, was stabbed 18 times in 2006. Her brother Azhar Nazir and cousin Imran Mohammed had attacked and killed Ms. Nazir in the family home in front of her two young nieces, after a heated argument about her choice of husband. The court heard that Samaria’s family disapproved of her request to marry an asylum-seeker of Afghani origin instead of someone from the Pakistani family circle. Mr. Mohammed, who was 17 at the time of the incident was sentenced to a minimum of ten years in youth detention, while Mr. Nazir was sentenced to serve a minimum of twenty years in prison.

3. Banaz Mahmod, 20, died in a 2006 ‘honour’ killing in which she was assaulted and strangled for leaving her husband. Banaz was considered by her father and uncle to have brought shame on her family after she left a violent marriage and began a relationship with another man. Banaz’s father Mahmod Mahmod and uncle Ari Mahmod were jailed for life in 2007 for ordering the killing. Cousins Mohammad Ali and Omar Hussain, who carried out the murder on their behalf fled to their country of birth, Iraq. Despite the Iraqi ban on extraditing its citizens, the two men were successfully extradited to Britain in November, 2011 and jailed for life for the murder.

4. Heshu Yones, 16 years old, was stabbed by her father 11 times and left to bleed to death in 2003. Her family disapproved of her Lebanese Christian boyfriend. Her
father had become "disgusted and distressed" by his daughter's westernised ways. He was sentenced to life in prison.

5. **Surjit Athwal**, 27, was murdered while visiting India in 1998. Her killing, the details of which have never surfaced, was arranged by her mother in law Bachan Athwal and husband Sukdave Athwal. Surjit married Sukdave when she was 16, in a community-arranged marriage. Surjit complained to her family about the abuse she experienced in her husband’s home and spoke openly about getting a divorce. Surjit, a mother of two, accompanied her mother in law to India but never returned. Her body has never been recovered. Both Bachan and Sukdave Athwal were sentenced to life in prison.

6. **Rukshana Naz**, 19, was killed in 1998 by her mother, Shakeela Naz who held her down, and eldest brother Sharzad, who strangled her. The family then disposed of the body in a field seventy miles away. Rukshana hoped to divorce her husband, who lived in Pakistan and who she had only seen twice since her arranged marriage at the age of 16. Rukshana had conceived a child with a childhood sweetheart and refused to have an abortion despite her family’s pressure to do so. Rukshana was seven months pregnant at the time of her death and already a mother of two. Sharzad unsuccessfully attempted to argue that he was provoked into killing Rukshana because her behaviour would have caused an ordinary person with his religious background to behave as he did. Shakeela and Sharzad were both sentenced to life imprisonment.

**United States**

7. **Sandeela Kanwal**, 25, in 2008 was strangled to death by her father, Chaudhry Rashid, who was outraged that Kanwal disgraced his family by seeking a divorce from an arranged marriage to her cousin. Mr. Rashid pleaded guilty to what he called a crime of passion. Mr. Rashid was sentenced to life in prison with the possibility of parole.

8. **Fauzia Mohammed**, 19, was stabbed and seriously wounded in 2008 by her brother who allegedly admitted that he intended to kill her. He apparently told investigators that he attacked his sister because she had disgraced the family. She planned to attend college in New York City.

9. **Amina Said, 17, and Sarah Said, 18**, were shot and killed by their father, Yaser Abdel Said in 2008 because he allegedly disapproved of their having boyfriends. Mr. Said is on the run and wanted by the FBI for murder.

**Australia**

10. **Mohd Shah Saemin**, 43 was killed in Sydney in February 2010. Andrew Iskandar was convicted in November 2011 for the death of his mother’s lover in a bid to protect his family’s honour. The Crown prosecutor alleged the killing was
planned after the affair became a talking point among Sydney's Indonesian community. The jury is yet to reach a verdict on his mother, Nita Iskandar, who is charged with being an accessory after the fact by helping her son to leave the country to evade capture following Mr Saemin’s death. Mr. Iskadar’s father, Mrs. Iskandar's husband, is yet to face trial and cannot be named. Andrew Iskandar faces a sentence of up to life in prison.

Belgium

11. **Sadia Sheikh**, 20, was shot and killed in October 2007 by her elder brother Mudusar in retaliation for her living with a Belgian man and refusing to accept an arranged marriage. The killing occurred when Sadia decided to return home in order to patch things up with her family. Mudusar, his parents – father Tarik Mahmood Sheikh and mother Zahida Parveen Sariya – and another sister Sariya were all convicted for their role in the murder. Sadia’s father and mother were found to have ordered the killing and were sentenced 25 and 20 years imprisonment respectively. Mudusar was sentenced to 15 years and Sariya to 5 years imprisonment.

Denmark

12. **Ghazala Khan** was killed in 2005 by gunshot and her husband, Emal Khan, was wounded two days after their wedding; Khan’s family opposed her choice of husband. Ghazala’s father, Ghulam Abbas was sentenced to 18 years for the murder of his daughter. Eight other people from her family took part in arranging and performing the murder and they were all found guilty by Østre Landsret (the High Court of Eastern Denmark) on 27 June 2006 on counts of manslaughter and attempted manslaughter (of Emal Khan).

France

13. **Fatima**, 21, was strangled and burned in a warehouse basement by her brother Mohammed in July, 2009. Six months before her death, Fatima was beaten by her brother, who caught her with a boyfriend. Fatima subsequently went to live with the boyfriend at his mother’s home. Mohammed pled not guilty to the charges, but received a sentence of 12 years in prison.

Germany

14. **Gülsüm S.**, 20 years old, was killed by her father and her brother in March 2009. The men hit her in the face with branches and pieces of wood in an assault so brutal that it was difficult to identify her body. A woman of Kurdish origin, she was killed because her family felt dishonoured by her sexual activities and the fact that she had had an abortion.
14. **Hatun Sürücü**, 23, was shot three times in the head by her brother Ayhan Sürücü, the youngest in an immigrant Kurdish family, in early 2005. Hatun had allegedly affirmed her right to control her own sexual choices which, to her father and brothers, represented a dishonour to the family.

15. **Morsal Obeidi**, 16, was killed by her brother because she had allegedly turned away from her family. Ahmad-Sobair Obeidi stabbed his sister 23 times because of her lifestyle choices. Just before her murder, Morsal had sought refuge from her family at a number of city social facilities. Prior to her death, Morsal had been living for more than a year in a youth safe house, although she had not completely severed ties to her family. Ahmad-Sobair received life in prison.

**Italy**

16. **Hina Saleem**, 20, was killed in 2006 by her father Mohammed Saleem, who claimed he was ‘saving the family honour’. Saleem had been living with an Italian boyfriend and had reportedly refused to marry a man chosen by her family to be her husband. Hina Saleem's body was found buried in the garden of her family's home. Her throat had been slit twenty eight times. Mohammed Saleem was sentenced to 30 years in prison. Members of the extended family who helped to bury the body were also convicted.

**Netherlands**

17. **Zarife**, 18, was a Dutch-Turkish highschool student whose father shot and killed her while on vacation in Turkey in 2003. Zarife was experiencing conflicts with her father in relation to her strict Islamic upbringing. As a result, she ran away and stayed at a shelter until her father persuaded her to return to her family home. He then killed her upon their arrival in Turkey, where the family was supposed to spend a family holiday.

**Sweden**

18. **Fadime Sahindal**, 26, was shot by her father in 2002 for her relationship with Swedish-born Patrick Lindesjo. Ms. Sahindal was outspoken in her denunciation of the conditions faced by Kurdish girls in Sweden to both the media and the Swedish Parliament. Her father and brother were initially convicted in 1998 of making unlawful threats against Ms. Sahindal and her Mr. Lindesjo, who was killed in a car crash. Four years later Sahindal was shot by her father, who confessed to having killed her in order to protect the family’s honour. Ms. Sahindal’s father was sentenced to life in prison.