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The defence of provocation needs to be changed in NSW.

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Legal loophole protecting violent men: why the defence of provocation needs to change

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Earlier this year, Chamanjot Singh was sentenced in the New South Wales Supreme Court to six years jail for slitting his wife's throat with a box cutter. He was found guilty of manslaughter by provocation, not murder, having successfully argued that he was provoked to kill because he suspected his wife had been unfaithful and intended to leave the marriage.

In cases like Singh, the use of the partial defence of provocation serves to legitimise lethal domestic violence. This latest case has reinvigorated debate in NSW about the use of the provocation defence and prompted a Parliamentary Inquiry.

The successful use of the provocation defence in this context raises important questions – should it remain as a partial defence to murder when arguably it trivialises the male perpetration of lethal violence against women?

Lethal provocation

Provocation acts as a partial defence to murder where a defendant successfully argues that they were provoked to use lethal violence. Whilst several Australian states have taken steps towards reforming provocation to limit its applicability, or in the case of Victoria, Tasmania and Western Australia to abolish provocation altogether – NSW has to date retained this controversial partial defence as an avenue away from a murder conviction.

Since 2005 in NSW, provocation has been successfully raised as a partial defence to murder in 17 cases. In four of these cases the victim was the current or estranged female partner of the male defendant.

Of these four cases, the recent sentencing of Chamanjot Singh and the 2008 sentencing of Bradley Stevens most clearly illustrate the concerns traditionally associated with this defence.
Both men were convicted of killing their female intimate partners. Both men were provoked to kill by suspicions of infidelity, not by any form of physical provocation. In response to the alleged provocation, Singh slit his wife's throat, whilst the extensive injuries inflicted upon Bradley Stevens' wife suggest she died from internal bleeding resulting from blunt trauma. Both men avoided a murder conviction and were instead convicted of manslaughter by reason of provocation.

Surely, NSW does not need another successful case of provocation by a man convicted of an intimate partner homicide to recognise that its operation is no longer in line with community values and expectations of justice?

### Justifying abuse

The Stevens case highlights the problems associated with provocation in cases of intimate homicide. Despite a significant history of violence perpetrated against his wife, Stevens' defence was able to paint a portrait of her as an inadequate and unfaithful mother to counterbalance his own history of domestic violence and to ultimately justify killing her.

Steven's justifications gained legal support through the Crown's acceptance of a guilty plea to manslaughter by reason of provocation and the imposition of a maximum sentence of 8 years and 9 months imprisonment. In comparison to the average maximum sentence for murder in NSW in 2008 – which was 16.8 years – this sentence was extremely favourable for the defendant.

At the time, the Stevens case did not generate the same high level of publicity that has been attached to other injustices of the provocation defence – such as the 2004 Victorian Julie Ramage case and this year's sentencing of Chamanjot Singh. But these cases do validate the need for a Parliamentary Inquiry in NSW. In deciding on the future viability of provocation in NSW, the Inquiry will need to closely examine the problematic abuse of this defence by men who kill a female intimate partner.

Julie Ramage's sister Jane Ashton campaigned for the abolition of provocation after Ramage's husband was sentenced to only 11 years for her murder. AAP Image/ Brent Bignell

Interviews conducted in 2010 with members of the NSW criminal justice system also support these concerns and further highlight why there is a pressing need for the inquiry to consider abolishing this controversial partial defence to murder. In interviews with members of the NSW Supreme Court Judiciary and Office of the Director of Public Prosecutions (DPP), participants described the operation of provocation as “problematic” and “certainly very worrying”.

The interviews also revealed support amongst members of the ODPP for the abolition of provocation. These participants believed that given the flexibility in sentencing for murder in NSW, as well as the need to recognise the intent in these cases, that moving provocation to
sentencing would create a “much more sensible” system.

Change needed now

The June sentencing of Chamanjot Singh has reinvigorated the push to abolish provocation in NSW. The abolition of provocation as a partial defence to murder would ensure that homicides occurring with an intent to kill or cause really serious harm are accurately labelled as murder by the criminal justice system.

More importantly, it would ensure that an avenue of excuse that has been routinely abused by men who kill a female intimate partner is closed. The justice system should no longer be seen to legitimise the use of lethal domestic violence.

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