

Criminalization of coercive control

Prepared by Pamela Cross, Advocacy Director, June 2, 2023

Who we are

Luke's Place, an award-winning, community driven, non-profit organization, works with women who have been subjected to intimate partner abuse to support them and their children through the family law process. Located in Durham Region, we provide direct services to women across Ontario and are a provincial and national leader in systemic work such as law reform, advocacy, research, education and training on family violence and family law.

Our work has led us to a deep understanding of the many ways different legal systems intersect with and affect women's family law experiences. For this reason, we have conducted some research on the possible criminalization of coercive control – in particular, its potential impact on women's family law cases – and been part of various discussions about this issue with other gender-based violence organizations over the past several years.

In 2021, Ottawa University Faculty of Law Feminist Public Interest Fellow Allana Haist prepared a research paper for Luke's Place entitled "Criminalization of Coercive Control in Canada: The Implications for Family Law."¹

Most recently, our staff team came together for a group discussion about whether or not we think coercive control should be criminalized, during which we heard the perspectives of those with lived experiences of coercive control as well as those whose daily work with survivors has shaped their thinking on this topic and those whose systemic work with the law has provided them with insights into past law reform successes and failures. While perspectives differed widely, we reached a common ground that forms that basis for the position Luke's Place is taking with respect to the criminalization of coercive control.

Background

Coercive control is a term that describes a pattern of behaviours, including psychological abuse -- which itself can encompass such things as intimidation, demeaning and insulting treatment, verbal abuse, threats, gaslighting, surveiling and stalking -- as well as social isolation and financial abuse. Physical violence may or may not be present, but the threat of it is often part of the coercive control.

Over time, coercive control can result in the victim losing her autonomy and sense of self-worth, thinking she is crazy and becoming, essentially, a hostage of the abuser. Many of those subjected to coercive control live in a state of constant fear, always anticipating when the next abusive act is going to happen. It can have a profound impact on children who are exposed to it.

¹ <https://lukesplace.ca/wp-content/uploads/2022/03/Stopping-Coercive-Control-by-Criminalization-Lukes-Place.pdf>

Coercive control is now included in the definition of family violence in the *Divorce Act* and Ontario's *Children's Law Reform Act*, but it does not yet appear in the *Criminal Code*. Some countries (most notably, England, Scotland and Wales) have developed a criminal offence of coercive control, and others (Australia, New Zealand and some American states) are considering doing so.

The verdict from the CKW inquest held in Renfrew County in June 2022 as well as the final report of the Nova Scotia Mass Casualty Commission both include recommendations related to the criminalization of coercive control.

Among feminists, survivors and those providing frontline support to survivors, there are varying perspectives on whether or not criminalization is a good idea.

Key issues

There are a number of reasons to think that criminalizing coercive control could have positive outcomes, among them:

- Creating a criminal offence of coercive control would empower some survivors by validating their experiences. Currently, with no criminal offence of coercive control, survivors can feel as though what has happened to them is not taken seriously by the criminal law and, by extension, by society at large.

A lot of the women we see ask "why won't they charge him?" or "why won't they help me?"²

It was very hard for me to hear that what was happening to me wasn't real as far as the police were concerned.

- This could lead to survivors having greater confidence in the criminal system

What are we saying to survivors if we don't criminalize it?

- Some evidence shows that coercive control is a strong red flag for future lethality. Criminalizing it could lead to earlier interventions that could save lives

It could have been a game changer for my mum if it had been criminalized.

- If supported by appropriate public education, criminalizing coercive control could increase public awareness and understanding of this often hidden form of intimate partner violence

Criminalizing coercive control would help family law lawyers understand how serious it is.

² All italicized comments come from the Luke's Place staff discussion about this issue.

- If well implemented and enforced, it could offer police a new tool to use and provide a deterrent to abusers who engage in this behaviour and hold them accountable

There are also a number of reasons to be concerned about the impacts of criminalizing coercive control:

- Given that police reporting rates by survivors of intimate partner violence are generally low (approximately 30%), simply adding a new offence may affect only a small number of victims

What tools and policies will be created for police to minimize retraumatization and make the process better and safer for the survivor?

- Abusers have been very successful in using other legal and policy responses to gender-based violence against their victims (eg mandatory charging). Criminalizing coercive control presents the same possibility; in particular, that abusers will manipulate the intent of the law to have their partner charged

Criminalizing coercive control just puts another tool in the abuser's toolbox to manipulate the law.

- By its nature, coercive control is a somewhat vague kind of behaviour, which might be difficult for police to accurately assess, especially if the abuser is making counter-claims against the survivor

How will police officers even be able to identify coercive control? There are so many nuances and cultural aspects to it.

- It may prove difficult to determine the elements of the offence. For example, if there has to be a "pattern of behaviours," what makes a pattern? Does it have to happen twice? Seven times? More?

Crowns need a standard procedure for prosecuting these cases.

- Likewise, establishing what evidence will be necessary to lead to a finding of guilty beyond a reasonable doubt may prove challenging

Women will be retraumatized when they have to testify and be cross-examined.

- There is likely to be a differential impact of criminalization on women from marginalized communities (for example, women with criminal histories, Indigenous and racialized women, women with disabilities)

There is already fragmentation in the criminal system.

- Criminalization will have an impact on survivors' family law and child protection cases

We already see the family law not protecting women and children when other charges have been laid.

Will it be used against her in family court if she doesn't report coercive control to the police? Or if she does but the police don't lay a charge?

- A carceral approach is expensive and does not offer either healing to survivors or a meaningful opportunity for abusers to take responsibility, heal and learn new behaviours for moving forward

How will sentencing reflect the long-term impact on the survivor as well as the best interests of children in terms of parenting arrangements?

Position on criminalization

Our current position on how we believe government should move ahead on the issue of whether or not to criminalize coercive controlling behaviours reflects what one member of our team said in our staff discussion:

It seems to me that the pros are best case scenarios that we hope for, but the cons are what is most likely to happen.

While there are strongly held positions both in favour of and against criminalization, we propose a less oppositional approach.

We recommend that government build the infrastructure needed to support survivors of IPV to engage meaningfully with the criminal system BEFORE committing to the creation of a new criminal law.

Here's how we propose that could happen:

1. Examine existing laws that could be used to respond to some forms of coercively controlling behaviours.
2. Provide NEW and MANDATORY training for all police to ensure they understand:
 - the prevalence of intimate partner violence and the many forms it can take, including coercive control
 - what charges are already available that could be used in response to coercive control
3. Create real accountability measures so police officers are evaluated regularly on whether they are applying the training in a meaningful way. These could include:
 - Establishing a standard of practice for responding to IPV calls across all police forces
 - Making assessment of officers' responses to IPV part of their regular performance reviews
 - Conducting spot reviews of IPV files, in collaboration with community partners
 - Applying consequences for officers who do not meet the standard of practice
4. Develop NEW and MANDATORY education for Crowns and judges, with accountability measures as above.
5. Fund access to free independent legal advice for survivors of gender-based violence who are considering accessing the criminal system (modeled on Ontario's ILA for sexual assault survivors program).

6. Create a Criminal Court Support Worker Program similar to Ontario's Family Court Support Worker Program to work in collaboration with existing criminal court victim/witness assistance programs.
7. Fund national stakeholder consultations and discussions about the appropriate use of transformative justice models as a response to GBV in addition to the existing criminal system.
8. Then, and only then, consider how the criminal law might need adaptation to respond effectively to coercive control, using a collaborative consultation process with all stakeholders.