

Panel presentation – Coercive control

Presented by: Emily Murray, Legal Director at Luke's Place

Introduction:

Thank you for the opportunity to speak with you today to share Luke's Place's position on this important issue.

For those of you who are not familiar with Luke's Place, it is a non-profit organization devoted to improving the safety and experience of women as they proceed through the family law process after fleeing an abusive partner. We have been in existence for over 20 years and are named after Luke Schillings, a 3½ year old boy who was murdered by his father on his first unsupervised access visit, after his mother had sought, but was unsuccessful in obtaining, an order for supervised access.

We are based in Durham Region, Ontario, and provide resources and services to women, community workers, lawyers and other stakeholders throughout the province. We provide direct services to nearly 1,000 women each year, we provide training, create resources, and engage in research and systemic advocacy.

Intersection between Family Law and Criminal Law:

Although our mandate is to provide support and services to women through the family law process, many of the women we support are also involved in the criminal justice system either as the complainant or the accused. Our anecdotal experience with women can be confirmed through past research showing the number of people who have concurrent family law and criminal law cases.¹

When it comes to cases involving family violence, the intersection between family law and criminal law is so deep that it is simply not possible to make changes to one system without impacting the other. This is why we are here today and why we have taken time as an organization to grapple with the issue of criminalizing coercive control. Overall, we take the position that the government needs to improve the system for survivors BEFORE adding a new offence to address aspects of IPV.

We take this position because of the anticipated negative consequences that criminalization may have on women who are or will be engaged with the family law process.

Existing challenges:

The intersection between criminal law and family law is often challenging for women to navigate. Trying to reconcile the different legal standards, processes, procedures and rights afforded in each system can be extremely confusing. Women are often frustrated by the lack of coordination and communication between the two courts. Although a woman is a party in the family case, she may be a complainant in the criminal case, lacking any agency or authority over the process and outcome. Even getting updated information about the status of criminal charges against the abuser may be complicated and time-consuming. Women are forced to retell their story over and over again to different sets of lawyers and judges and are at risk of having the abuser try to coerce them into not testifying in the criminal case in exchange for a particular family court outcome. Abusers may also use the concurrent proceedings as a way to delay and derail the family court case.

Adding another criminal offence does nothing to address these problems. Instead, it has the potential to simply increase the number of women who are forced to navigate concurrent proceedings.

Impact on credibility assessments

We have two concerns about criminalizing coercive control in terms of a woman's family court case that we want to talk about today.

The first is the impact that a criminal charge or conviction and, importantly, the lack of criminal charge and conviction can have on the outcome of a family law case.

In cases involving allegations of IPV, the lack of criminal charges and convictions often becomes a focal point of the evidence in family court. It is relied on extensively by abusers as evidence that the violence did not occur. If a woman has not reported abuse to the police or the police have not laid charges or the abuser was not found guilty at trial, her claim of abuse in family court is subject to increased scrutiny and she is at risk of not being believed.

The same is true for women who return to the abuser or stay in a relationship in which they are being abused. There are many reasons why a woman may not leave or report abuse to police, including but not limited to financial dependency on the abuser, distrust of police, fear of losing the children, fear of increased violence, shame and isolation. This is particularly true for women from marginalized communities and gender-diverse survivors who may not want to have any involvement with the criminal process because of systemic oppression and racism. Unfortunately, not all legal system stakeholders in family court understand and appreciate this. Instead, a woman's claim of abuse is viewed with distrust and increased skepticism.

We already anticipate challenges for police when it comes to properly identifying and charging cases of coercive control. Will family law judges and lawyers understand these

challenges? Or will they instead view a lack of criminal charge or conviction as evidence that the violence alleged in the family court case did not occur?

Adding another criminal offence will not address these concerns but may result in judges and others making negative credibility assessments about women who raise coercive control in their family law cases without having immediately left the relationship or reporting the violence to police.

Risk of women getting charged

Another concern we have about this new offence is that it may increase the number of women we are supporting who are facing criminal charges themselves.

We have seen the impact of mandatory charging policies on women, with a number of women being criminalized after being mislabelled as the primary aggressor in a domestic dispute. Abusers know how to manipulate the system and present themselves as the victim as opposed to the aggressor when police are called. Adding a new criminal offence without first re-evaluating these policies can have a disastrous effect on women in family court.

Women who are criminally charged are automatically at a disadvantage in family court when it comes to their credibility and the strength of their case. Abusers will use the existence of a charge or the involvement of police to gain a tactical advantage in family court – alleging for example that they are the victims and claiming that the woman’s parenting time with her children should be limited. It gives the abuser another way to exert power and control and makes a woman less likely to reach out to police in the future, even if she is at serious risk of harm. Also know that women in these situations are at risk of pleading guilty to just get the criminal charges dealt with as quickly as possible or as a result of pressure from the abuser.

We are concerned that adding another criminal offence, particularly one that may pose challenges for police in terms of proper identification, will be manipulated and used by abusers to their advantage.

Conclusion

What we already know to be true in the family law context is that changes to the law alone do not lead to meaningful change unless they are combined with education, training and meaningful consultation. We continue to see legal system stakeholders misidentify and fail to understand coercive control in family law cases even though it has been a part of some provincial legislation since 2013 and federal legislation since 2021.

The concerns I have talked about today must also be viewed in light of the very real fact that most women are forced to navigate the family law system without a lawyer. This means they will be stuck trying to manage two different court systems completely on their own.

Instead of moving to criminalize coercive control, we encourage you to instead:

follow recommendation V-12 from the Mass Casualty Commission to establish an expert advisory group to examine whether and how criminal law could better address the context of persistent patterns of controlling behaviour at the core of gender-based, intimate-partner and family violence.

In addition, we also encourage you to:

- Create and support a criminal court support worker program so survivors have someone to assist them through the process, similar to the family court support worker program in Ontario
- Establish and properly fund free independent legal advice for survivors who are involved in criminal cases either as an accused or a witness
- Meaningfully explore transformative justice models to respond to gender-based violence, including coercive control
- Study the impact of criminal proceedings on survivors' family court/child protection/immigration and other legal cases given the extent to which these legal issues intersect
- Implement new and mandatory training and education for all those in the criminal system to ensure they understand IPV and its impact on women and children
- Create accountability measures to ensure legal system stakeholders are meaningfully applying what they have learned through education and training.

These recommendations were outlined in our position paper, which can be found on the Luke's Place website. We will also be incorporating these recommendations into our written submissions which will follow today's panel discussion.

Thank you.