

UPDATE: Criminalization of coercive control and Bill C-332

Background

At Luke's Place, we support women and their children who are fleeing abuse and are engaged with the family law/court process through both direct service and system change work.

Through this work, we have developed a deep understanding of the many ways different legal systems intersect with and affect women's family law experiences.

We have followed discussions about the criminalization of coercive control with great interest and through the lens of the potential impact of such a move on survivors and their engagement with both criminal and family law.

Our position is that criminalization is not the best approach to respond to abusers who engage in coercively controlling behaviours.

MP Laurel Collins introduced a private members bill – Bill C-332 – last year to criminalize coercive control: <https://www.parl.ca/documentviewer/en/44-1/bill/C-332/first-reading>

Last fall, the Department of Justice, with its provincial and territorial counterparts, held a series of virtual consultations at which stakeholders shared their perspectives on criminalization. Luke's Place Legal and Advocacy Directors both participated in these consultations: <https://lukesplace.ca/oral-submissions-on-criminalizing-coercive-control/>

Bill C-332 passed first and second reading and then moved to the House of Commons Standing Committee on Justice and Human Rights for further study. As part of this process, the Committee held public hearings. Luke's Place submitted a written brief - <https://lukesplace.ca/written-submission-on-criminalizing-coercive-control/> -- and our Advocacy Director, Pamela Cross, appeared as a witness to give oral testimony.

Where the Bill is now

Following the public hearings, the Committee met to discuss possible amendments to the Bill. It returned the Bill to the House of Commons with significant revisions, where it will be debated and voted on one last time before moving to the Senate, where the same process will repeat itself: <https://www.parl.ca/documentviewer/en/44-1/bill/C-332/second-reading>

It's hard to say at this point whether this process will be completed before the next election call. If it isn't, then the Bill will die and the entire process would have to start over following the election.

The amendments that the Committee has put forward reflect the input from witnesses at the hearings and considerably strengthen the Bill. That's good news.

However, Luke's Place continues to oppose the criminalization of coercive control altogether, and we plan to take that perspective to the Senate if and when the Bill reaches the public hearing stage there.

Understanding the amendments

The original Bill had a number of gaps and weaknesses, most of which have been addressed through the amendments.

Language:

The original Bill described the offence as being behaviour "towards a person with whom they [the accused] are connected" and then attempted to define who this would be through the following list:

- Current spouses, common-law partners or dating partners
- Members of the same household who
 - Are former spouses, common-law partners or dating partners
 - Are relatives or
 - Carry out, or have carried out, parental responsibilities in respect of the same child, that child being under the age of 18 years; or
- A period of less than two years has passed since they ceased to be connected.

The amended bill simply uses the language of intimate partner and imposes no time limit on the applicability of the provisions.

Description of the offence:

The original bill did not provide a clear description of the elements of the offence and required the conduct to have a significant impact on the victim.

The amended bill removes the requirement that the conduct have a significant impact on the victim. The offence is a pattern of conduct that "consists of any combination, or any repeated instances of any of the following acts:"

- Using, attempting to use or threatening to use violence against the intimate partner, any person under the age of 18 who is the intimate partner's child or in their lawful care or charge, any other person known to the intimate partner or any animal in the care of or the property of the intimate partner
- Coercing or attempting to coerce the intimate partner to engage in sexual activity
- Controlling, attempting to control or monitoring the intimate partner's actions, movements or social interactions, including by means of telecommunication
- Controlling or attempting to control
 - how the intimate partner cares for children
 - the intimate partner's employment or education
 - the intimate partner's finances or property
 - the intimate partner's expression of gender, physical appearance, manner of dress, diet, taking of medication or access to health services or to medication
 - the intimate partner's expression of their thoughts, opinions, religious, spiritual or other beliefs or their culture, including their use of language or their access to their linguistic, religious, spiritual or cultural community
- Threatening to die by suicide or to self-harm

- Any other conduct if that conduct could reasonably be expected to cause the intimate partner to believe that their safety or the safety of anyone known to them is threatened

Best interests exception/proof of facts:

The clauses in the original bill that offered a defence against a charge of coercive control where the accused was acting in the best interests of the person towards whom the conduct was directed have been removed.

Penalty:

The maximum penalty for someone found guilty of this offence has been raised from five to ten years.

Other:

The amended bill sets out explicitly that safety includes psychological safety.

Analysis

The committee heard from witnesses about the challenges with the convoluted description of who the intended victims of the offence are. Witnesses also testified about the reality that post-separation abuse can extend for many years after the relationship has ended.

As a number of witnesses testified, laying and prosecuting a charge of coercive control and obtaining convictions where appropriate will be difficult for a number of reasons:

- Coercive control is not a single-incident activity, whereas criminal law generally is focused on single incidents
- It can be subtle and highly nuanced, looking different from one relationship to another
- There are often no visible injuries or witnesses

Taken together, the revisions address these concerns and will make the law stronger, easier to understand and, hopefully, easier to enforce and interpret.

Nonetheless, our underlying concerns about criminalization remain in place. While we understand the appeal of criminalizing coercive control – especially in terms of validating the experiences of survivors – we continue to believe the possible negative consequences outweigh the potential benefits:

- The criminal law has largely failed survivors of gender-based violence in the past
- Police reporting rates of IPV are low, so a new offence may affect only a small number of survivors
- Abusers will be able to manipulate the law, as they have done in the past, to have their partner charged
- There is likely to be a differential impact of criminalization on women from marginalized communities
- Criminalization will have an impact on survivors' family law cases: if the survivor is improperly charged, if the abuser is not charged or is charged but found not guilty
- A carceral response to gender-based violence is expensive and does not offer either healing to survivors or a meaningful opportunity for those who cause the harm to take responsibility, heal and learn new behaviours for moving forward.

What now?

Luke's Place will continue to monitor progress of Bill C-332 and is prepared to engage with the Senate should that seem appropriate at the time.

Stay tuned for updates as we have them!