

Criminalization of coercive control: Effective implementation

Prepared by:

Luke's Place Support & Resource Centre for Women & Children

December 2024

Submitted to:

Standing Senate Committee on Legal and Constitutional Affairs

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 control¹ – 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. We have also coauthored a brief on this issue with LEAF for the Canadian Women's Foundation.

Our position has been developed based on our frontline work and internal research as well as a review of the following:

- existing legislation in other jurisdictions
- Private Member's Bill C-332
- Mass Casualty Commission Final Report
- CKW Inquest recommendations
- House of Commons Standing Committee on Justice and Human Rights study on controlling or coercive behaviour in intimate relationships
- Standing Committee on the Status of Women's study on intimate partner and domestic violence in Canada

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

In July 2023, we brought together our staff team for a group discussion about whether or not coercive control should be criminalized. 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.

What is coercive control?

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, surveilling 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.

Coercive control is now included in the definition of family violence in the *Divorce Act*, but it does not yet appear in the *Criminal Code*. Some jurisdictions have developed a criminal offence of coercive control, and other jurisdictions are considering doing so.

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

Our position on criminalization of coercive control

While Luke's Place recognizes that criminalizing coercive control could have some positive impact, we do not support this, for a number of reasons, which are set out briefly below. Please see our attached Brief for a more detailed description of our concerns.

1. The criminal law has largely failed survivors of gender-based violence, as we discuss in greater detail below.
2. Given that police reporting rates of IPV are generally low (approximately 30%), a new offence may affect only a small number of victims.
3. Abusers have been very successful in using other legal and policy responses to IPV against their victims (e.g. 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.

4. By its nature, coercive control is hard to define, making it difficult for police to accurately assess, especially if the abuser is making counter-claims.
5. It may prove difficult to determine the elements of the offence. What is “repeatedly or continuously?” What is “controlling or coercive conduct?”
6. Establishing what evidence will be necessary to lead to a finding of guilt beyond a reasonable doubt may prove challenging.
7. 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).
8. Criminalization will have an impact on survivors’ family law and child protection cases.
9. 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.

Bill C-332

While Luke’s Place does not support the criminalization of coercive control, we wish to commend both the House of Commons Standing Committee on Justice and Human Rights and the Department of Justice for their work to amend the original Bill to reflect the important recommendations made by witnesses at the Committee hearings. This has led to a Bill that is much stronger and has more possibility of being helpful to survivors.

Delayed implementation

If the legislature has decided to pass Bill C-332 and criminalize coercive control, then careful thought and consideration should turn to *how* this new law will be implemented to reduce the risk of hurting those this law aims to protect. We can and must learn from places where similar laws have already been passed.

Some jurisdictions have passed the law but delayed implementation before various steps could be taken to ensure the system was ready to enforce it.

In Scotland, implementation of the law was delayed for over a year to allow for comprehensive training and education of police and other legal system professionals. Many in person and virtual training sessions were delivered to thousands of police

officers.² A communications campaign was also launched to increase public awareness of coercive control before the law came into effect.

Even with this commitment to training and educating before the law took effect, implementation has not been without challenges. A report filed with the Scottish Parliament in May 2024 called for more and ongoing training for police and other legal system professionals to ensure they could properly identify and respond to situations involving this form of violence. The report also called for another communications campaign to help raise awareness of the public about healthy relationships and intimate partner violence.³ The Committee reviewing the legislation also heard expert testimony that survivors engaged in the criminal legal system continue to find it “unremittingly grim” even after the creation of the new laws designed to provide them with more protection, highlighting the importance of focusing on improving the criminal justice system for survivors before simply adding more criminal offences.⁴

New South Wales, Australia provides another example of delayed implementation. The law was passed in the fall of 2022 but did not take effect until July 2024. In the intervening period, the government invested \$5.6 million towards mandatory police training, public education campaigns and educational resources.⁵ The training program was described by their Minister of Police and Counter-terrorism as follows:

The mandatory training is thorough, it shows how seriously the NSW Police Force are taking this, and it ensures all operational police can identify and take action against coercive control offences in NSW. The feedback I’m getting from the police on the ground is that the training is valuable, comprehensive and officers feel well supported.⁶

Another example of delayed implementation is Queensland, Australia. In Queensland, the Government established an independent, consultative taskforce in 2021 to examine the need for a specific offence against criminalization of coercive control and the experiences of women across the current criminal justice system.⁷

² As described in White Ribbon Australia’s submission re criminalization of coercive control in Queensland: chrome-extension://efaidnbmnnnibpajpcglclefindmkaj/https://www.womenstaskforce.qld.gov.au/__data/assets/pdf_file/0004/691312/wsjt-submission-white-ribbon.pdf

³ <https://www.parliament.scot/about/news/news-listing/msps-say-domestic-abuse-act-has-begun-to-have-a-positive-impact-but-more-must-be-done>

⁴ Ibid.

⁵ <https://www.sbs.com.au/news/article/australias-first-standalone-coercive-control-laws-come-into-effect-today-will-they-work/66zkvszs1>

⁶ <https://www.jurist.org/news/2024/07/australias-first-coercive-control-offense-comes-into-force/>

⁷ <https://www.womenstaskforce.qld.gov.au/about-us>

This taskforce, after receiving over 700 submissions about criminalization, recommended that, to address some of the concerns raised about criminalization, there be:

- 1) A lengthy period before the new law comes into force to provide time for the community, the police, the criminal justice system, services sector to be fully educated and prepared
- 2) A review after 5 years to ensure the legislation is operating as intended
- 3) A commitment by the Government to work with First Nations people to meet the Closing the Gap Justice Targets, including a reduction in the representation of First Nations people in the criminal justice system.⁸

As described in the Executive Summary of their report:

“The Taskforce recommends that no new offences to criminalise domestic and family violence commence until service and justice system responses are improved. The Taskforce is satisfied that to do so would involve an unacceptable risk of unintended consequences, which could cause more harm to those whom the reforms are intended to protect, particularly First Nations peoples.”⁹

The taskforce outlined a 4-phase implementation plan:

Phase 1 includes such things as:

- Plan implementation
- Establish an implementation supervisor
- Plan how to monitor and evaluate agreed upon outcomes
- Commence co-design of a strategy to reduce over-representation
- Commence development of communications strategy
- Commence development of primary prevention strategy
- Develop and plan rollout of training and education and change management across service and justice system, including for police, lawyers, judicial officers

Phase 2 includes such things as:

- Finalise monitoring and evaluation framework and collect baseline data
- Commence implementation of a communication strategy
- Commence implementation of a primary prevention strategy
- Develop and implement a strategic investment strategy
- Commence rollout of training and education and change management across service and justice system, including for police and lawyers, and through consultation with judicial officers

⁸ [Hear her voice - the first report from the Women's Safety and Justice Taskforce](#)

⁹ [volume-1-exectutive-summary-and-introduction.pdf](#), at page 30

Phase 3 includes such things as continued implementation of primary prevention plans, communications strategy, investment strategy and training and education. It also includes ongoing monitoring of implementation and publicly reporting on outcomes.

Phase 4 includes ongoing training and education, ongoing monitoring, continued focus on improving services and supports to survivors and creation of a 5-year review process.

The taskforce released its report in 2021, which included 89 recommendations. The Government then released a response to the taskforce's recommendations, either supporting them or supporting them in principle. The Government acknowledged that "[s]ystem-wide reform is necessary before the new offences come into effect". Their formal response focused on the following areas for reform:

- systemic reforms across Queensland's criminal justice system
- increased awareness-raising in the community and improved primary prevention
- improving DFSV service system responses, specifically integrated service responses and high-risk teams, perpetrator interventions and co-response
- training, education and change management across parts of the DFSV and justice system
- improvements to police responses to DFSV through new and continuing initiatives to address whole-of-services transformational change
- enhancements to Queensland Courts to ensure the safety of victims
- a suite of legislative amendments
- governance, reporting and accountability mechanisms.¹⁰

The Government's plans for implementation were "broadly consistent" with the phased approach recommended by the taskforce.¹¹

Since this time, the Government drafted legislation to criminalize coercive control, which passed in March 2024 and will take effect in May 2025.¹² The Government also reports annually on its progress when it comes to the taskforce's many recommendations, which reports can easily be found online.¹³

¹⁰ <https://www.justice.qld.gov.au/initiatives/queensland-government-response-womens-safety-justice-taskforce-recommendations/response-to-report-one-from-the-taskforce>

¹¹ <https://www.publications.qld.gov.au/dataset/3212af28-07f4-47cf-a349-d59bb737f06e/resource/84bb739b-4922-4098-8d70-a5a483d2f019/download/qg-response-wsijtaskforce-report1.pdf>

¹² <https://www.qld.gov.au/community/getting-support-health-social-issue/support-victims-abuse/need-to-know/coercive-control/coercive-control-laws#:~:text=other%20support%20options-,Changes%20to%20the%20law,to%20control%20or%20coerce%20them.>

¹³ <https://www.justice.qld.gov.au/initiatives/queensland-government-response-womens-safety-justice-taskforce-recommendations/our-progress/reform-annual-reports>

Conclusion and recommendations

Passage of Bill C-332 seems inevitable, so our focus has shifted from advocating against it to advocating for an implementation process that will increase the likelihood that the new offence of coercive control will be used effectively, with minimal (unintended) negative impact on those it is intended to support - survivors of intimate partner violence.

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

We need to look at system changes that focus on prevention rather than continuing to tinker with those that respond after the abuse has happened, as recommended in the Final Report of the Nova Scotia Mass Casualty Commission, which calls for, among other things:

- A society-wide response (V14)
- Frameworks for structured decision-making by police with a focus on violence prevention (V10)
- A national, collaborative process bringing together all stakeholders “to develop a national framework for a women-centred approach to responding to intimate partner violence” (rec. V10)

Figuring out the best ways to respond to and, ultimately, prevent coercive control will take an all of society approach, which needs to include all levels of government, survivors, community-based experts and other stakeholders.

More specifically, we recommend that, **before Bill C-332 receives Royal Assent, the government:**

1. Follow the Mass Casualty Commission’s recommendation V-12 to establish an expert advisory group drawing on the gender-based-violence advocacy and support sector 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.
2. Mandate provinces and territories to provide NEW and MANDATORY training for all police to ensure they understand:
 - the prevalence of IPV, including coercive control
 - already available charges that could be used in response to coercive control
3. Mandate policing associations to 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. Work with the Canadian Judicial Council, the National Judicial Institute and other appropriate bodies to support the development of NEW and MANDATORY education for Crowns and judges, with accountability measures as above.
 5. Support provincial and territorial governments to create free independent legal advice services for survivors of gender-based violence who are considering accessing the criminal system (modeled on Ontario's ILA for sexual assault survivors program).
 6. Support provincial and territorial governments to develop Criminal Court Support Worker Programs 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. Develop a well-resourced national public education campaign to increase general awareness about coercive control, what it can look like and its dangers.