

August 2023

## **Position Paper on Bill C-202 and Bill C-332: An Act to amend the Criminal Code (controlling or coercive conduct)**

The Barbra Schlifer Commemorative Clinic is writing to offer our expertise in response to recent legislative proposals to criminalize coercive control, Private Member's Bill C-202, *An Act to amend the Criminal Code (controlling or coercive conduct)*, and Private Member's Bill C-332, *An Act to amend the Criminal Code (controlling or coercive conduct)*.

The Barbra Schlifer Commemorative Clinic offers legal services and representation, trauma-informed counselling, and multilingual interpretation to marginalized and racialized women and gender-diverse people who have experienced violence. Since its founding in 1985, the Clinic has assisted more than 100,000 women and gender-diverse survivors of violence through its direct services, and many others through advocacy efforts, legal reform, submissions, projects, and programs.

Bill C-202 and Bill C-332 seek to make coercive and controlling behaviour a criminal offence, with the intentions of providing more legal protection for individuals in dangerous situations. MP Collins stated, "Coercive control is one of the common early signs before domestic homicide, even when no physical violence has occurred. Countless stories of femicide show aggressors with histories of coercive, controlling behaviour that have gone unnoticed as warning signs or red flags. Criminalizing coercive and controlling behaviour will save lives and send a clear message that abusive behaviour is unacceptable and will not be ignored."<sup>1</sup>

### **What is coercive control?**

Coercive control is a pattern of acts of assault, intimidation, threats, humiliation, or other abuse, that is used to harm or frighten the survivor/victim. Thus, coercive control differs from individual events of violence because it is a pattern of harmful behaviour. Coercive control also usually includes an element of emotional abuse, but it can be broader than this, including psychological, verbal, social, economic, and sexual abuse. Coercive control tactics include depriving victims/survivors of support services (including medical services), controlling/tracking/limiting access to financial resources, isolation from family/friends, stalking, and many others.

### **Should coercive control be criminalized?**

---

<sup>1</sup> Laurel Collins, "Debates of May 18<sup>th</sup>, 2023" (May 2023) House of Commons Hansard <https://openparliament.ca/debates/2023/5/18/laurel-collins-1/>.

*Criminalization of coercive control in other jurisdictions*

If Canada criminalizes coercive control, it would be following in the footsteps of several other jurisdictions that have criminalized this behaviour in recent years. Notably, in 2015, England and Wales introduced the offence of "controlling or coercive behavior in an intimate or family relationship" to capture controlling/coercive conduct beyond physical assault.<sup>2</sup> In 2018, Scotland introduced a specific offence of domestic abuse which includes controlling/coercive behavior, criminalizing patterns of abusive conduct.<sup>3</sup>

In England and Wales, data suggests that criminalizing coercive/controlling behaviour has not had a significant impact on the rates of domestic abuse and securing convictions for coercive control has proven to be challenging. The volume of coercive/controlling behavior being reported in England and Wales has increased each year since 2015, but the proportion of these offences leading to a charge remains only 6% as of 2018.<sup>4</sup> Proving coercive and controlling behavior is a significant challenge for prosecutors due to the practical challenges of collecting evidence which proves non-physical violence beyond a reasonable doubt.<sup>5</sup>

While Scotland's 2018 legislation creating a specific offence for coercive control is seen to be the "gold standard" of legislation on domestic violence, victims of such offences have not felt the same way. Interviews with victims revealed that many felt that the final sentence in their case did "not reflect their whole experience," and found that the psychological abuse and control they experienced by the accused was not taken fully into consideration by the court and only a small aspect of the abuse they endured was revealed during the trial.<sup>6</sup>

*Criminal Code provisions may already capture acts of coercive control*

While the Clinic supports the intention behind these Bills to reduce coercive control and support survivors/victims, criminalizing this behaviour does not address the root issues of this harm and may lead to additional challenges. Creating a new criminal offence targeting any behaviour should be treated with great caution as Black people, Indigenous people, people of colour, disabled people, non-status people and poor people are disproportionately impacted by the

---

<sup>2</sup> Serious Crime Act, 2015 c. 9, s. 76.

<sup>3</sup> Scottish Government, "Domestic Abuse Act in Force" (April 2019) <https://www.gov.scot/news/domestic-abuse-act-in-force/>.

<sup>4</sup> British Government Home Office, "Review of the Controlling or Coercive Behaviour Offence" (March 2021) at 6. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/982825/review-of-the-controlling-or-coercive-behaviour-offence.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982825/review-of-the-controlling-or-coercive-behaviour-offence.pdf).

<sup>5</sup> *Ibid.*, at 7.

<sup>6</sup> The Scottish Parliament Criminal Justice Committee, "Post-legislative scrutiny of the Domestic Abuse (Scotland) Act 2018" (May 2023) at 9. <https://sp-bpr-en-prod-cdnp.azureedge.net/published/%20CJ/2023/5/4/dc22c15c-8bfa-4421-ad25-168abf3084ed/CJ062023R5.pdf>.

criminal justice system. Furthermore, the current *Criminal Code* provisions may capture many acts that contribute to ongoing coercive control.

While the words “coercive” or “controlling behaviour” do not appear in the *Criminal Code*, criminal harassment, assault, sexual assault, forcible confinement, human trafficking, uttering threats, fraud and stalking are all criminalized behaviours which may form the basis of a prosecution in cases of coercive control. Canadian courts are slowly becoming more familiar with the many types of gender-based abuse.<sup>7</sup> However, none of these provisions focuses on the repeated nature of abusive acts which is at the core of coercive control.

Recent cases from the UK highlight the overwhelming amount of evidence required to meet the threshold for coercive control. One of the first cases in the UK courts to deal with allegations of coercive control was *F v M*.<sup>8</sup> In this case, the judge found that the threshold for coercive control had been met as there was evidence that the perpetrator (F) exhibited manipulative behaviour, harassed the victim (M), and forcibly confined M, among other controlling acts which the judge described to be “dehumanizing.”<sup>9</sup> Although coercive control was found in this case, the actions of F could have been addressed through existing provisions in the Criminal Code, including the offence of forcible confinement. The high threshold for coercive control would have been difficult to satisfy in this case without evidence of behaviour that is already criminalized.

The above example highlights how many distinct forms of abuse were needed to support a conviction for coercive control. It bears noting that many existing offences can be laid to show the compounded abuse. It also raises the question of how many incidents create a pattern to be considered coercive control; how is coercion proved; how does the survivor prove they felt controlled and without recourse; how is the intent to harm proven; and finally, how all of these elements can be proved to the high criminal standard of beyond a reasonable doubt.

We also have grave concerns about including a broad defence to coercive control based on the coercive actor’s “best interests” for the survivor/victim. Such a notion undermines the very principle of abuse that assails autonomy and dignity and introduces a patronizing/paternalistic construct to justify coercive control. Furthermore, the survivor/victim should not be put in a position of proving the absence of “best interests” which would put an onerous and humiliating burden on the survivor/victim.

With these many concerns about the actual positive impact of a new offence of coercive control intended to acknowledge this harmful behaviour and hold perpetrators accountable, there is a

---

<sup>7</sup>Sagesse, “Coercive Control Brief” (2021)  
<https://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11112021/br-external/SagesseDomesticViolencePreventionSociety-e.pdf>.

<sup>8</sup> *F v M* [2021] EWFC 4

<sup>9</sup> *Ibid.*, at para 30, 64.

further concern. The promise of a new criminal tool may unreasonably raise the expectations of survivors for a new social remedy. With the already known traumatizing effects of the criminal justice system on survivors who currently come forward to report domestic assault and sexual assault with disappointing results, the promise of criminalizing coercive control may leave many new complainants disappointed, unvalidated and retraumatized.

*Barriers to reporting coercive control and unintended consequences*

The introduction of a new criminal offence of coercive control will not address the systemic problem that survivors/victims of gender-based violence face major barriers to reporting violence that they have experienced. The prosecution of any offence is dependent on the incident being reported, which is often challenging for individuals who have experienced abuse and face fear, isolation, and even dependence upon the person abusing and controlling them. Furthermore, Black, Indigenous, racialized, disabled, gender diverse, non-status and immigrant survivors often experience additional discrimination and distrust of the legal system, creating additional barriers to reporting any violence.

Rape myths and stereotypes about domestic violence continue to influence police discretion and negatively impact survivors' experiences with the criminal justice system.<sup>10</sup> It is also crucial to consider the unintended consequences of criminalizing coercive control on specific communities that are already over-policed and criminalized. . Acknowledging these complexities is essential to ensure an inclusive and effective approach to addressing coercive control outside of the criminal justice system.

There is also a risk that women who are victims of coercive control may be threatened with criminalization or charged themselves. A recent study highlighting the experiences of Black women arrested/charged for abusing their intimate partners revealed that many women used force in response to their partners' violence, but the police did not take the time to listen to them.<sup>11</sup> Moreover, the women also reported police aggression, police excessive use of force, revictimization, and racist attitudes by the police, all of which contribute to personal distrust towards the police.<sup>12</sup>

In response to the disproportionate number of women who were reporting violence against them and subsequently facing criminal charges, the Schlifer Clinic launched the *Criminalization of Women Project*. The Clinic's findings reveal an alarming trend: there is an escalation in women

---

<sup>10</sup> Cela Serrano-Montilla et al, "Assessing Police Attitudes Toward Intervention in Gender Violence: the Role of Training, Perceived Severity, and Myths About Intimate Partner Violence Against Women" (2023) *Journal of Family Violence*.

<sup>11</sup> Patrina Duhaney, "Contextualizing the Experiences of Black Women Arrested for Intimate Partner Violence in Canada" (2022) 37:21-22 *Journal of Interpersonal Violence* NP21189.

<sup>12</sup> *Ibid.*

being criminalized while seeking state protection from gender-based violence.<sup>13</sup> Thus, the potential criminalization of coercive control could exacerbate harm to the communities that the clinic serves.

## **Recommendations for the DOJ**

Criminalizing coercive control risks creating unintended consequences and may fail to adequately support individuals who have experienced coercive control. The Clinic supports the Mass Casualty Commission's recommendation that the government establishes an advisory group to examine how the criminal law could better address patterns of controlling behaviour in the intimate partner context.<sup>14</sup> However, addressing coercive control through the criminal law does not necessarily entail the criminalization of coercive control. Rather than criminalizing coercive control at this stage, the Schlifer Clinic recommends taking the following measures to better support individuals experiencing coercive control.

### *Alternative to Criminalization: Coercive control as an aggravating factor during sentencing*

A potential alternative to creating an offence of coercive control is to acknowledge the harms of repeated acts of abuse by making coercive control a factor to be weighed in at sentencing with help from a contextual report such as a Gladue Report, a victim impact statement or a community impact statement.

Introducing coercive control during sentencing rather than making it a separate offence may adequately address the goal behind criminalizing coercive control, as it recognizes the significant impact of this form of abuse on survivors/victims without creating potential challenges associated with establishing a separate criminal offence. Treating coercive control as a relevant factor at sentencing allows lawmakers to send a strong message that such behavior is acknowledged as harmful and will not be tolerated and ensure that perpetrators of this type of abuse face appropriate penalties when convicted of related offenses. To effectively implement this change, legal professionals require training and education to help them understand the complexities of coercive control cases. Additionally, efforts must be focused on raising public awareness about coercive control, supporting survivors/victims of coercive control, and addressing the root causes of this abuse to prevent this harm.

### *Training for criminal justice system actors*

---

<sup>13</sup> For more information on the BSCC *Criminalization of Women Project* please visit:  
<https://www.schliferclinic.com/criminalization-of-women/>

<sup>14</sup> Mass Casualty Commission, "Final Report of the Mass Casualty Commission: Recommendations," *Volume 3: Violence, Recommendation V. 12* (2020) <https://masscasualtycommission.ca/files/documents/Turning-the-Tide-Together-List-of-Recommendations.pdf>.

Legal professionals require training and education to help them understand the complexities of coercive control cases. This recommendation aligns with several recommendations in the Renfrew County Inquest, including recommendations 29 and 30: providing professional education and training for justice system personnel on IPV- related issues and providing enhanced IPV training for police officers.<sup>15</sup> It is crucial that judges, police officers, and other criminal justice system actors are properly educated on coercive control as coercive behaviour in relationships can be concealed within the complexities of interpersonal relationships, making it challenging to recognize the extent of the harm being inflicted. By being well-versed in the signs of coercive control, justice system actors can more effectively assess situations and provide appropriate support to victims/survivors.

### *Diversity in the criminal justice system*

Furthermore, it is important that there is diversity among justice system professionals. Judges and police officers from various backgrounds can bring vital perspectives when addressing coercive control. This inclusivity can allow for culturally sensitive interventions and enhanced trust between victims/survivors and the system.

### *More sustainable access to justice resources*

Ensuring victims/survivors seeking help in cases of coercive control can access reliable and sustainable justice resources is crucial. Through our legal services and special projects, the Schlifer Clinic is proud to actively assist individuals experiencing coercive control. Supporting initiatives and organizations that provide accessible and enduring justice resources is fundamental to supporting victims/ survivors of coercive control.

### *Public legal education*

Public legal education plays a vital role in eradicating coercive control and providing essential support to its victims. Raising awareness about the signs and available legal remedies can empower individuals to recognize and respond to coercive control. This education also fosters a society that stands against such behavior, creating a supportive environment for individuals to seek help. Promoting awareness within communities contributes to putting an end to coercive control and offering a strong safety net for those affected.

**Deepa Mattoo B.A, LL.B, MBA, PGD, LSM**

Barrister and Solicitor/Executive Director Barbra Schlifer Commemorative Clinic

---

<sup>15</sup> “Verdict of Coroner’s Jury: Jury Recommendations” (June 2022) [https://lukesplace.ca/wp-content/uploads/2022/06/CKW-Inquest-Verdict-Recommendations-SIGNED\\_Redacted.pdf](https://lukesplace.ca/wp-content/uploads/2022/06/CKW-Inquest-Verdict-Recommendations-SIGNED_Redacted.pdf).