Addressing coercive control: Recommendations to the Standing Committee on the Status of Women

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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.* It does not yet appear in the *Criminal Code*, although some aspects are covered by existing criminal offences (e.g. criminal harassment, stalking, uttering threats).

Urgent need to focus on prevention

Coercive control should not yet be criminalized. While we can understand the potential positives of criminalization, including increased empowerment and safety for some survivors, we are concerned that these positives will be outweighed by the negatives of this new law, which include:

- The criminal law has largely failed survivors of gender-based violence to date.
- There are already existing criminal offences that address some aspects of coercive control that are not well used and understood.
- Given that police reporting rates of IPV are generally low (approximately 30%), a new offence may affect only a small number of victims.
- Abusers have been very successful in using other legal and policy responses to IPV against their victims.
- Coercive control is hard to define, identify and prove beyond a reasonable doubt.
- It will have a differential impact on women from marginalized communities, who are already overly criminalized.
- It will impact a survivor's family law and child protection cases.

The focus instead should be on how to prevent coercive control from happening in the first place rather than adding to the legal remedies available only after the abuse has happened. Rather than creating new criminal law, we should review those that exist already as well as policies such as mandatory charging to determine their effectiveness, as recommended by both the CKW inquest and the Mass Casualty Commission.

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.

Here's how we propose that could happen:

1. Do not move ahead with Bill C-332 at this time.
2. 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.

3. Examine existing laws that could be used to respond to some forms of coercively controlling behaviours.
4. 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
5. 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
6. Develop NEW and MANDATORY education for Crowns and judges, with accountability measures as above.
7. 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).
8. 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.
9. Fund national stakeholder consultations and discussions about the appropriate use of restorative and transformative justice models as a response to GBV in addition to the existing criminal system.

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.

Urgent need to address parental alienation through education

Parental alienation claims are disproportionately made against women leaving abusive partners in family court. The abuser falsely claims that her attempts to protect the children from the violence are a strategic maneuver designed to keep him from the children. Abusers also engage in alienating behaviour themselves, to try to turn the children against their mothers. All of this behaviour forms part of the ongoing violence.

We agree with the concerns outlined by a number of GBV organizations when it comes to parental alienation claims in family court. However, we think the solution to this issue is rooted in mandatory education for judges and others in the family law system paired with appropriate accountability measures. We also support an approach in family court cases where the judge begins with an analysis of the family violence claims and only moves to assess claims of parental alienation where family violence has not been found. The fact that a survivor has raised family violence should not be used as evidence of alienation against them under any circumstances.[1]

[1] For a more detailed overview of our position on parental alienation, please see our blog post and the blog post of our former advocacy director, Pamela Cross