



LEAF
FAEJ

WOMEN'S LEGAL
EDUCATION & ACTION FUND
FONDS D'ACTION ET D'ÉDUCATION
JURIDIQUE POUR LES FEMMES

**Submissions to the Standing Committee on Justice and Human Rights Study on
Controlling or Coercive Conduct within Intimate Relationships**

February 16, 2021, 11am-12pm

Megan Stephens, Acting Executive Director & General Counsel, LEAF

Good morning. My name is Megan Stephens. I am the acting Executive Director and General Counsel at the Women's Legal Education and Action Fund - LEAF. I am grateful for the opportunity to appear today from TKaronto, the Dish with One Spoon Territory, as part of your study on coercive and controlling behaviour.

For 35 years, LEAF has worked to advance the equality rights of women and girls through litigation, law reform, and public education. LEAF has long advocated for the need to improve the justice system's response to gender-based violence, including intimate partner violence.

I want to start by thanking you for making the time to study coercive control. This work is important because IPV remains a pervasive and widespread problem in this country. We know the status quo is not working.

1 in 3 women in Canada experience IPV and other forms of GBV. The risks of IPV and GBV are greater for women who live with multiple intersecting inequalities, including Indigenous, Black and racialized women; women with disabilities; and migrant women.

Over the course of the last year, as the world's attention has been focused on the COVID-19 pandemic, another "shadow pandemic" has raged on as lockdowns have isolated women with abusive partners. Frontline workers in shelters and transition homes across the country have reported increases in physical violence as well as a dramatic rise in reports of coercive control being used by partners.

Coercive control may be a relatively new concept to many of you – but it has long been recognized by both front line service providers and academics as lying at the core of IPV.

While there are many different working definitions of coercive control, it generally understood as a course of intimidating, degrading and regulatory practices used by abusers to instill fear and threat into the everyday lives of their victims. It is a highly gendered practice that often seeks to maintain or expand the gender-based privilege of a male partner.

While I commend you for this study, I also want to underscore the importance of proceeding carefully in your work. It would be a mistake to rush to criminalize coercive control without thinking through the potential unintended consequences of criminalization. While this might be symbolically powerful, we have unfortunately seen too often how the criminal justice system can be weaponized, revictimizing those it seeks to protect.

There are operational, policing, and prosecutorial challenges associated with the proposed criminalization of CC, all of which require careful consideration.

Operational challenges

In terms of operational challenges, it will not be easy to transplant the concept of coercive control from clinical and academic contexts into the criminal law. The concept covers a broad range of conduct – and is the subject of multiple definitions (as many as 22 by one academic's count).

If coercive control is going to be criminalized, the elements of the offence should be clear and draw on terminology and language used elsewhere in Canadian criminal law. Adding an overly complicated new offence to the Criminal Code won't help survivors. Bill C-247 as drafted, which draws heavily from the UK legislation, is in my respectful submission, unduly complex.

Policing challenges

Assuming one could operationalize an offence of coercive control, there will be challenges in ensuring that police officers are able to understand and identify reports of “coercive control”. Extensive training would be essential for police across the country. Even with training, the UK experience suggests that many police are still struggling to “see” coercive control as worthy of criminal charges.

Another more significant policing challenge is that many survivors – particularly those from vulnerable or marginalized communities – face real barriers to reporting, including a distrust of police. In particular, many women may not want to report out of fears that they:

- Will not be believed due to discriminatory or racist stereotypes of police
- Risk having the state intervene in their relationships with their children
- Could face criminalization themselves

Real work is needed to restore the trust of survivors in police – and the justice system more generally.

Prosecution challenges

Finally, as someone who spent more than a decade working as crown prosecutor before joining LEAF, I think there would be significant challenges associated with the prosecution of coercive control – particularly as currently drafted in Bill C-247.

I am also particularly concerned about the potential impact of prosecutions on complainants. The offence as drafted requires proof both that the accused's actions could reasonably be expected to have a *significant impact* on that person – meaning that it was objectively reasonable to expect that impact - and that it has such an impact on that person – meaning



LEAF
FAEJ

WOMEN'S LEGAL
EDUCATION & ACTION FUND
FONDS D'ACTION ET D'ÉDUCATION
JURIDIQUE POUR LES FEMMES

that each complainant will need to give evidence that she was so impacted. This could lead to the revictimization of women as they navigate the justice system, having to testify about their experiences, and opening them up to requests for access to their medical or therapeutic records to call into question whether and how they have been impacted.

I want to end where I began by emphasizing that the status quo is no longer ok. Criminalizing CC may be a useful tool to add to the system's toolbox of response – but that is a complicated issue.

I recommend that you continue to study this question and submit that it be considered more thoroughly as part of the ongoing work being done by WAGE to develop a NAP on VAW/GBV. As part of any future study, I strongly urge the government to centre the voices of survivors, particularly those of Indigenous, Black and racialized women – whose experiences with the CJ system may make them particularly wary of criminalization as a solution.

Thank you for inviting me to speak. I look forward to your questions.