October 20, 2023

Ellen Wiltsie-Brown
Criminal Law Policy Section, Department of Justice Canada
284 Wellington Street
Ottawa, Ontario
Canada K1A 0H8

Re: Joint Submissions of Rise Women's Legal Center and West Coast LEAF Association on the criminalisation of coercive control.

Rise Women's Legal Centre ("Rise") is a pro bono community legal clinic and teaching facility serving women and gender diverse people all over British Columbia. Rise provides unbundled legal services to clients otherwise unable to access legal services. Rise clients include people who are economically disadvantaged, members of marginalized groups, and people seeking protection from family violence. In addition to providing direct service to clients, Rise conducts original research into family violence and the legal system and provides support and training to provincial advocacy programs.

West Coast LEAF Association ("West Coast LEAF") is a BC-based legal advocacy organisation. West Coast LEAF uses legally rooted strategies (litigation, law reform and public legal education) to dismantle gender-based discrimination and move toward gender justice. West Coast LEAF aims to transform society by advancing access to justice, healthcare and economic security, promoting freedom from gender-based violence, supporting child and family well-being, and ensuring protection for the rights of those who are criminalised.

We respectfully acknowledge that our offices are located on traditional, ancestral, and unceded Coast Salish homelands, including the territories of the xwməθkwəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and səl̓ilwətaʔɬ/Selilwitulh (Tsleil-Waututh) Nations (colonially identified as the City of Vancouver).

Introduction

These jointly prepared written submissions set out our collective position on the Department of Justice's proposed new criminal offence of coercive control. They also respond to comments raised at the panel oral submissions heard on October 3, 2023. During the panel, a participant from Nova Scotia commented that family courts are often the first responders for intimate partner violence and suggested that family courts were an ideal venue to address coercive control. The commenter specifically referenced the success of the family law system in British Columbia in addressing coercive control through protection orders.

Given this comment at our oral presentation, and the fact that many other anti-violence organisations are already speaking to creation and framing of the new offence, we have focused these written submissions on responding to this assertion.

As legal organisations working to end gender-based violence in British Columbia, it is our experience that the protections offered to victims of coercive control through family law mechanisms (both the *Family Law Act,* SBC 2011, c-25 and the *Divorce Act,* RSC 1985, c. 3), are woefully inadequate. While we have significant concerns about trying to address coercive control through the creation of a new crime, we assert that the Department of Justice should take no comfort from the assertion that survivors are being protected by family courts and respectfully support the positions of Luke's Place, LEAF (National) and the National Association of Women Lawyers, all of whom recommend that the government build the infrastructure, services, and knowledge base to support survivors as a precondition to creating a new criminal offence which has the potential to result in negative unintended consequences.

These submissions catalogue the lessons learned from the British Columbia context and the limitations of addressing coercive control through legislative means in the absence of a broader investment in systemic change, education, and social supports for survivors.

Background

In 2013, British Columbia made significant changes to its provincial family law legislation, the *Family Law Act (FLA).* Among other changes, the *FLA* now includes a broad definition of family violence that incorporates non-physical forms of violence, including coercion. The *FLA* also directs judges to consider patterns of coercive and controlling behaviour when determining whether to make protection orders for victims of violence. In 2019, the *Divorce Act,* (*DA*) was also amended to include a new definition of family violence that specifically includes coercive and controlling behaviours.[1] Family law has therefore preceded criminal law in identifying coercive control as unacceptable and harmful behaviour. Important insights can be gained by looking at how the legal system has responded to these legislative changes in the context of family law.

Despite an expanded definition of family violence, which has been in place for more than a decade in BC, and which theoretically enable a robust legal response to protect survivors of coercive control, we have seen courts, lawyers, and law enforcement struggle to meaningfully expand their view of 'serious' family violence beyond the incident-based physical violence paradigm.

BC's experience is relevant in three respects.

First, it demonstrates that by changing the legal definitions of "family violence" without doing the difficult and systemic work of addressing pervasive misconceptions, myths, stereotypes, and biases about family violence, family legislation has fallen far short of its promise to reduce the safety risks for survivors of family violence and their children, including in cases of coercive control.

Second it demonstrates the way the legal system and court processes can be weaponized by coercive controlling persons, even while purporting to provide support and pathways to safety for survivors.

---

[1] *Divorce Act*, RSC 1985, c. 3 (2nd Supp.), s. 2 ("*DA*").

Finally, we highlight the burden and costs placed on survivors when family courts are the only forum available for protection and social supports are largely unavailable or inadequate.

We hope to underscore the complexity of addressing coercive control through legislation in these submissions. This is not to suggest that coercive control should never be addressed through legislation or the criminal law system, but we wish to emphasize that this is a complex social phenomenon that must be addressed with care. Legislative changes should only occur with input from experts in gender-based violence, survivors with lived experience, and with an investment in education and services. We echo Recommendation 12 of the "Turning the Tide Together: Final Report of the Mass Casualty Commission: Recommendations"[2] which asks that the federal government establish an expert advisory group to "examine whether and how criminal law could better address the context of persistent patterns of controlling behavior at the core of gender based, intimate partner, and family violence."[3]

The Need for Education on Coercive Control and Social Supports for Survivors

The challenge of criminalising coercive control lies not only in defining and framing the offence, but also in shifting societal and cultural, and particularly legal system attitudes to look beyond incidents of physical assault. This is no small project, as the experiences in other jurisdictions demonstrate.

Studies from the United Kingdom report several difficulties with operationalizing the offence of coercive control and operational readiness to respond effectively to incidents of coercive and controlling behaviour among social workers, police officers, and specialist domestic abuse practitioners. For instance, first response officers were perceived as not understanding coercive control because there was no visible injury, only "a verbal argument", which was not considered to be a problem.[4] Several studies have noted that for police to fully embrace the use of a coercive control offence, a change of mindset is needed from focusing on specific incidents of physical violence, towards one that looks for complex patterns of abuse.[5] In jurisdictions that have adopted a coercive control offence, coercive control continues to be assessed as less serious in comparison to physical abuse, and something separate and apart from physical abuse, rather than part of a continuum of violence experienced by survivors.[6] Moreover, police officers have also been reported to be both ill prepared to collect evidence of coercive and controlling behaviour (which may require interviews in longer, narrative form), and unwilling to prioritize the offence because of the difficulty of obtaining evidence to support the offence.[7]

At the prosecution and conviction stages, literature on the application of coercive control offences in other jurisdictions has found that prosecutors also face several barriers in pursuing the offence, including a lack of trauma-informed prosecution methods (for example, pre-trial witness interviews, which allow the cases to be prosecuted without only relying on a survivor's oral testimony.) Studies

---

[2] The Joint Federal/Provincial Commission into the April 2020 Nova Scotia Mass Casualty, *Turning the Tide Together, Final Report of the Mass Casualty Commission: Recommendation* (March 2023). https://masscasualtycommission.ca/files/documents/Turning-the-Tide-Together-List-of-Recommendations.pdf [Turning Tides Recommendations*].*

[3] *Ibid*.

[4] Government of the United Kingdom Home Office. "Review of the Controlling or Coercive Behaviour Offence" (March 2021), <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982825/review-of-the-controlling-or-coercive-behaviour-offence.pdf> accessed 16 October 2023 p. 31.

[5] *Ibid*, p. 31

[6] *Ibid*, p. 32.

[7] *Ibid*, p. 33.

also report that coercive control offences are frequently dropped from the charge sheet, with other offences, such as assault, being prioritized.[8] The introduction of coercive control offences has required a shift in approach by a wide range of justice system actors, from police officers, to prosecutors, to judges.[9]

BC's experience with including non-physical abuse in the definition of "family violence" in the *FLA* reflects the same barriers, with many police and lawyers being ill equipped to identify and address non-physical forms of violence, and often fail to take protective measures even where violence is identified.

The BC *FLA* was drafted after significant consultation. The Ministry of Attorney General began its review of the *Family Relations Act* in 2006 and produced the "White Paper on *Family Relations Act* Reform" in 2010, seeking input and discussion on the legislative reform.[10] The legislative changes included an expansive definition of "family violence" that includes many forms of non-physical violence. Many were hopeful that these changes would improve the lives of those experiencing violence and provide better mechanisms for them to seek safety. However, our experience is that the legislation often fails to protect survivors and their children due to widespread misconceptions about family violence across the legal system. These misconceptions are often reinforced by deeply gendered societal expectations which normalize dominating behaviours by men towards women and other marginalised genders.

Although the *FLA* definition of "family violence" does not specifically identify "coercive control," the legislative definition includes a range of psychologically or emotionally abusive behaviours including:

1. intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
2. unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
3. stalking or following of the family member, and
4. intentional damage to property.[11]

When determining whether a protection order should be made and assessing family violence as it relates to the best interests of the child, courts must also consider "whether any psychological or emotional abuse constitutes, or is evidence of, a *pattern of coercive and controlling behaviour* directed at a family member."[12]

Research by Susan Boyd and Ruben Lindy following the enactment of the *FLA* found that despite the willingness of the courts to recognize an expanded concept of family violence, the presence of family violence in a particular case did not necessarily lead to protective orders. They found that decisions

---

[8] *Ibid*, p. 35.
[9] *Ibid*, p. 38.
[10] British Columbia, Ministry of Attorney General, *White Paper on Family Relations Act Reform* (British Columbia, July 2010, Ministry of Attorney General, Justice Services Branch, Civil Policy and Legislation Office.) <https://www.courthouselibrary.ca/sites/default/files/inline-files/family-law-white-paper-2010.pdf> accessed 16 October 2023.
[11] *Family Law Act,* SBC 2011, c-25 s. 1 [*FLA*].
[12] *Ibid* at ss. 38 and 184 (emphasis added).

tended towards an assumption that shared parental responsibility and even shared parenting time were appropriate goals even where abuse was present.[13]

Our experience as family law practitioners, and original research by Rise,[14] has similarly shown that though the *FLA* and *DA* have theoretically increased the scope of family violence to include coercive and controlling behaviours, in practice, non-physical family violence is still minimized by police, lawyers, and the judiciary. The *FLA* has changed our laws, but our culture has not yet followed suit. Changing the way we understand violence, power, resistance, and safety is a crucial next step for BC's legal system professionals.

The lack of understanding about non-physical violence is evident in the way protection orders operate under the *FLA*. The courts are required to assess psychological and emotional abuse and whether this constitutes a pattern of coercive and controlling behaviour in their determination of making family law protection orders.[15] However, it has been our experience that it is frequently difficult for clients to obtain protection orders without being able to point to incidents of physical violence. Threats, including threats to cause death or bodily harm which could attract a criminal response, are often minimized as being a normal part of a breakup. Many legal professionals hold the common, but false, belief that violence ends upon separation, and as a result fail to take ongoing safety concerns seriously once the survivor has left the family home. In *Barendregt v Grebliunas*, 2022 SCC 22, the Supreme Court of Canada identified improper minimization of these types of factors by BC's own Court of Appeal.[16]

Even when protection orders are made, they are frequently ordered only for short periods of time, providing very little protection for those experiencing violence.[17] Our experience has been that women are sometimes asked to bargain away protection orders to secure orders about parenting, support, or property division.

Breaches of protection orders reported to the police do not always result in action or charges being recommended to the provincial Crown. When deciding not to prosecute breaches of protection orders, clients report that police tell them that the behaviour is just 'part of a relationship breakdown' and that 'he just wanted to say goodbye'. If charges are recommended to Crown, their explicit written policy is to only pursue charges where 'the circumstances of the non-compliance are safety related."[18] Our experience is that breaches of protection orders are often not enforced where the breaches relate to prohibited communications and other forms of non-physical violence. Many Rise clients share the view that a protection order is "just a piece of paper" and will not do anything to provide protection. Their perception is justified when breaches are not taken seriously by law enforcement and Crown. While we have recently tried to research the issue of how many breaches of protection orders actually result in criminal charges by making freedom of information requests, the

---

[13] Susan Boyd and Ruben Lindy, *Violence Against Women and the BC Family Law Act: Early Jurisprudence,* (2015) Can Fam LQ, Forthcoming at 21 < Boyd, Susan Barbara and Lindy, Ruben, Violence Against Women and the B.C. Family Law Act: Early Jurisprudence (2015). Canadian Family Law Quarterly, Forthcoming, <https://ssrn.com/abstract=2744819> accessed 16 October 2023 at 45.

[14] Haley Hrymak and Kim Hawkins, *Why Can't Everyone Just Get Along?* (Rise Women's Legal Centre: January 2021)., at 25-30 [Why Can't Everyone Just Get Along].

[15] *FLA*, *supra* note 11 at s. 184.

[16] *Barendregt v Grebliunas*, 2022 SCC 22 at paras 180 – 188.

[17] *Why Can't Everyone Just Get Along, supra* note 14 at 55.

[18] British Columbia Prosecution Service, *Crown Counsel Policy Manual: Intimate Partner Violence* (Victoria: Ministry of Public Safety and Solicitor General, 20 May 2022) <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/ipv-1.pdf> accessed 13 October 2023.

failure to maintain relevant statistics means that it is impossible to obtain a clear picture of how many breaches are ignored; however, clients and partnering organisations report this consistently.

The failure of the legal system to recognize non-physical violence is not isolated to the family law system. For instance, the offence of criminal harassment offence set out in s. 264(1) of the *Criminal Code of Canada*, which also covers some behaviours associated with coercive control, is also underutilized by justice system actors. In our experience, many survivors have been told by police that their ex-partner stalking them is a civil issue or a family court issue. This is also the case for criminal intimidation pursuant to s. 423(1), which also appears to be underutilized. Our review of criminal intimidation cases found that only a handful of cases engage criminal intimidation in the context of intimate partner violence, and that the charge of intimidation was often withdrawn.[19]

In addition to family law protective orders, survivors of coercive control could attempt to access protection through peace bonds. Peace bonds are theoretically available when no crime has been committed, as they are preventive in nature, and are also available in response to psychological injury or harm. However, it is not practically possible to apply for a peace bond in British Columbia as a private citizen, since Crown counsel has asserted authority over the process. Where police have failed to assist survivors with peace bonds and we have attempted to approach the Court directly, Crown counsel has intervened and sent the matters back to the same police who failed to investigate in the first instance, leaving clients without direct access to the remedy. We have been advised by many clients that police have told them that they cannot seek a peace bond until after they have already been assaulted, and that peace bonds are only available to protect against physical violence – both are wrong in law. As with protection orders, we see a system-wide failure of law enforcement to identify, understand, and prosecute instances of family violence that does not manifest as physical assault.

Coercive control requires a radically different approach to understanding violence. It requires police and legal system to professionals to recognize and assess subtle patterns occuring over long periods of time rather than focusing only on individual incidents of assault. Such a shift will require ongoing and widespread education, including a significant commitment to training legal system participants.

In addition, since court orders intended to provide safety to survivors are frequently not prosecuted when they are breached, legislative changes need to be supported by a wider and robust investment in social services that proactively support and create safety for survivors. During the legislative review of the *Domestic Abuse (Scotland) Act*, Professor Burman told the legislative committee:

> We need more radical reform. We cannot simply rely on the criminal justice system to sort things out. We are facing a deeply entrenched problem, and we need more ambitious shifts across all our public bodies. We need a co-ordinated, bespoke, multi-agency response involving the police, health, education and social services to develop an early-intervention, public health-focused approach to domestic abuse. That would be my main message.[20]

As we shared in our oral submissions, there is a real risk that criminalisation will take up criminal justice resources but only create temporary safety for a small percentage of survivors. We need not look as far as England to see that even where survivors have obtained protection orders or where

---

[19] *R v Peckinka*, 2022 ABPC 81; *R v Healey*, 2016 ABPC 199.

[20] Scotland, Parliament, *Criminal Justice Committee, Meeting,* (March 8 2023), <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-08-03-2023?meeting=15193&iob=129578> accessed 13 October 2023.

offenders have been convicted and sentenced, this does not necessarily result in meaningful supports, or adequate safety for the complainants or survivors. A stark example of this is the Renfrew County triple femicide, in which the offender had previously been convicted of domestic violence offences and went on to commit three femicides against previous partners.[21] If criminalisation of coercive control is going to be meaningful for survivors, the offence needs to be supported by a wider investment in education and services.

Judicial Processes as a Space of Coercive Control

When drafting a criminal charge, it is important to be alive to the fact that abusive individuals will always look for ways to maintain power and control over their victims, and this frequently includes co-opting the legal system.

As legal practitioners, we witness the ways the family, criminal, immigration, and child protection systems are used by abusive former partners to continue their controlling and coercive behaviour, both before and after the end of a relationship. In family law settings, this is often referred to as litigation abuse or litigation harassment where "an abusive party intentionally [uses] the court system to control or exhaust the opposing party."[22]

In Rise's report "Why Can't Everyone Just Get Along", we provide examples of this behaviour to include:

> Initiating multiple proceedings, using custody as a means of control, choosing to represent oneself despite having the ability to afford counsel in order to have direct contact with the survivor, and draining the survivor's economic resources or legal aid hours. Further, abusive litigants may intentionally eliminate the survivors' ability to hire a lawyer by contacting all of the lawyers in the area and sharing confidential information about the case, thereby "conflicting out" the lawyer from being able to represent the woman.[23]

Some other forms of coercive control we have seen in family law proceedings are:

1. Refusal to provide financial information or have provided inaccurate and incomplete financial information for the purposes of calculating the payor's income for child and/or spousal support;

2. Refusal to pay child and/or spousal support in a timely manner, therefore requiring the recipient to submit further court applications and make additional court appearances;

3. Refusal to follow court orders for parenting arrangements, requiring the protective parent to repeatedly take action to enforce court orders;

---

[21] Kristy Nease, "What the courts knew about Basil Borutski before he murdered 3 women" (December 4, 2017) <https://www.cbc.ca/news/canada/ottawa/basil-borutski-what-courts-knew-1.4424431> accessed 16 October 2023.
[22] *Why Can't Everyone Just Get Along, supra* note 14 at 30.
[23] *Why Can't Everyone Just Get Along, supra* note 14 at 31.

4. Signing the child(ren) up for extracurricular activities during the other parent's parenting time, therefore restricting the survivor's ability to care for the children during their own parenting time; and

5. Threats to report to child protection, for example where a former spouse is earning income from sex work.

Similar issues of coercive control can arise in the child protection (family policing) system,[24] criminal law, and immigration law systems. False and malicious reports to the child protection system allow abusive partners to maintain control over the survivor.[25] Through anonymous reporting, parents are identified by, and therefore engaged with, the child protection system and their children are entangled in the family policing system. Anonymous reporting creates an environment of surveillance and enables false reporting where perpetrators of family violence can make malicious reports to re-victimize parents, subjecting them to investigations, and potentially, child apprehension, without the reports being tracked. West Coast LEAF has called for anonymous reporting, currently permitted by the *Child, Family and Community Service Act,* RSBC 1996, c-46 in British Columbia, to be amended and require confidential reporting that provides sufficient privacy to good faith reporters while allowing malicious reports to be tracked.[26]

We have seen similar actions by perpetrators in both the criminal and immigration law systems. Many anti-violence organisations have raised concerns about survivors being charged with assault or defending themselves or as a result of false allegations. In some cases, accused individuals will invite large numbers of friends or relatives to sit in the courtroom and intimidate the survivor. In the immigration law system, abusive spouses have reported to Immigration, Refugees, and Citizenship Canada ("IRCC") or Canada Border Services Agency ("CBSA") if the survivor does not have immigration status, triggering the process of an investigation or deportation of the survivor. If the survivor obtained permanent residency status through spousal sponsorship, false claims that the abuser was used by the survivor to obtain immigration status has led IRCC to investigate into the genuineness of spousal relationships. These situations require the survivors to defend themselves from the police, IRCC, CBSA, and the abuser, often without adequate emotional or legal support.

At Rise, we have seen situations where the perpetrator of violence has utilized all four of these legal systems against one client. These four systems do not operate in silos and have many intersecting components. A survivor who does not have permanent residency and is charged or convicted of a criminal offence may be excluded from obtaining immigration status because they could be considered criminally inadmissible. A survivor who has had their children apprehended by the state would not have the ability to move forward in their family law claims as they are no longer the caregivers for the children. A parent who is under a deportation order could potentially lose their

---

[24] Learning from advocates at the upEND Movement, West Coast LEAF has adopted the use of "family policing system" to describe what is known as the 'child protection system" because this language describes how the system maintains power and control over the lives of families and children – most often Indigenous families and children – through surveillance, regulation, and punishment. See: West Coast LEAF. "What is the Family Policing System?". November 5, 2022 https://westcoastleaf.org/what-is-the-family-policing-system-an-interview-with-parents-advocating-collectively-for-kin-pack/ and upEND Movement.."Glossary: family policing system." accessed October 16, 2023 https://upendmovement.org/family-policing-definition/.

[25] Rise Magazine. "False and Malicious CPS Reports: Why NY Should End Anonymous Reporting." (September 1, 2020) <https://www.risemagazine.org/2020/09/false-and-malicious-reports-why-ny-should-end-anonymous-reporting/>

[26] Joint Submissions of West Coast LEAF, Parents Advocating Collectively for Kin, Atira, Feminists Deliver, Keeping Families Together, RainCity Housing, and individual signatories. "Submissions on CFCSA Reform." (August 30, 2022). <https://westcoastleaf.org/wp-content/uploads/2023/06/2022-08-30-West-Coast-LEAF-and-Collective-Submissions-on-BC-CFCSA-Reform.pdf>

ability to see and care for their Canadian-born children again. A survivor facing criminal charges would have difficulties obtaining safety and protective orders for themselves and their children in the family law system. The controlling and coercive individual understands that these are all potential ways to further harm the survivor and will use the systems available to manipulate and gain control.

We anticipate that abusers will continue to use the legal system to exert control, even with the creation of a coercive control offence, unless significant safeguards are built into the criminal system. As described by other organisations in oral submissions, BIPOC and 2SLGBTQ+ survivors are at greatest risk of being targeted by the criminal system as aggressors.

Lessons must be learned from the impacts of the family, child protection, criminal, and immigration systems to ensure that the criminal law does not cause and perpetuate harm to survivors of abuse. To that end, it is critical that if the Department of Justice proceeds to criminalise coercive control, that it create an expert advisory to assist with wording of the offence and to help identify possible safeguards.

Limits of addressing coercive control through an exclusively family law approach

As noted above, during the oral submissions to the Department of Justice on October 3, 2023, panelists suggested that coercive control may be effectively addressed in family law.

First, although family law has the potential to be one avenue for addressing family violence, it is inaccessible to many survivors and widely acknowledged as one of the most significant gaps in access to justice in Canada. Family law remedies available under the *DA* and *FLA* place a significant financial burden on survivors, which many individuals cannot shoulder. As family law representation is usually limited due to either the constraints of legal aid or the prohibitive cost for private litigants, the Department of Justice needs to be alive to the role and limits of family law when crafting solutions to coercive control behaviors.

Second, the *FLA* does not cover all intimate relationships that may have coercive and controlling behavior. For example, under the *FLA* couples who are dating, but not in a marriage-like relationship, would not meet the definition of "family members" and thus not be able to apply for protection orders. When considering the scope of a coercive control offence, attention needs to be given in identifying which intimate partner relationships are excluded from protection under existing legislative schemes.

For those who do have access to family law for protective orders, the use of this system comes at a high cost to survivors. On the surface, the series of decisions by the BC courts between the former spouses KSP and JTP could be seen as a success in addressing coercive control.[27] The offender was convicted of assault, the survivor was granted approximately $800,000 in a civil battery case, and in part due to the family violence, the survivor was allowed to relocate to Germany. From our perspective, this case is a cautionary tale that illustrates the burden placed survivors of violence in creating safety through family court and their limited voices in criminal court.

---

[27] The former spouses KSP and JTP separated following a violent incident in 2018. Following this incident JTP was charged, and later convicted of assaulting KSP. JTP received an absolute discharge*, R v Pyper,* 2020 BCPC 246. The parties also engaged in civil and family litigation. The civil litigation resulted in an almost $800,000 judgement being made in KSP's favor for the tort of battery, *Schuetze v Pyper*, 2021 BCSC 2209. The family litigation resulted in a trial with a decision rendered in 2023, *K.S.P. v J.T.P*, 2023 BCSC 1188.

JTP was arrested and charged for assaulting KSP. JTP's criminal charges were resolved by way of a plea bargain, and he received an absolute discharge. The sentencing judge described the assault to be "out of character" for JTP, in stark contrast to both the civil and family decisions which found that there were multiple incidents of family violence committed by the offender, both before and after the separation. Following the absolute discharge, KSP received no substantive protection from JTP through the criminal system.

As the complainant, KSP was not consulted on the agreed statement of facts entered at sentencing, and the sentencing judge did not consider the injuries described in her victim impact statement.[28] The limited scope of family violence taken up in JTP's criminal proceedings is illustrative of the way our criminal system focuses on narrow instances of physical violence and its limited capacity to address complex behaviors of coercive controlling behaviour over time. This case also demonstrates some of the challenges of shoehorning coercive control into the criminal process through sentencing factors, since the sentencing judge is limited to sentencing only for the offences that the accused has been found guilty of; a complainant cannot introduce 'new' offences through their victim impact statement.

At the same time, to rely solely on the family law system to address coercive control is to place the cost and responsibility of securing their own safety firmly on the survivor, while absolving the criminal court system of its obligations to protect women and marginalised genders from abuse. After the criminal process was concluded, KSP was left with the responsibility for protecting her own safety. She did this through the family law system, where KSP and JTP spent at least $400,000 of family property on litigation.[29] The reasons for judgement in the main family case were delivered almost five years after the parties had separated. Among other findings of family violence, Justice MacNaughton specifically found JTP's post-separation conduct, and his use of the court system amounted to coercive and controlling behaviors.[30] In short, KSP spent close to half a million dollars to engage in the family law system for five years during which time she continued to experience the harm caused by a coercive controlling partner despite the presence of counsel, despite making frequent appearances before judges, and despite actually having a protection order in place for a brief time.

In many ways, KSP is an exceptional case; this level of investment in family litigation is simply not possible for many survivors of family violence, nor is it a reasonable requirement of any individual needing safety. Many of the clients we serve at Rise endure abusive behaviors long past their separation from abusive partners because there is no practical and effective legal system to support safety. Family law has not been an effective space to address coercive control in British Columbia, and it will continue to be ineffective if the cost of accessing the family court system is beyond the means of many survivors.

Creating safety for survivors will require a coordinated and careful multisystem approach; criminal and family law may play a role, but neither is a sufficient response to coercive control. As voiced during the oral submissions to the Department of Justice on October 3, 2023, by many organisations, criminal law solutions will only be successful if survivors are broadly supported, have the economic means to leave relationships, have access to housing and civil legal aid. The criminal law and family law systems will only be able to identify coercive control with a significant investment in training. When deciding how to respond to coercive control, whether it be a new offence or updates to pre-existing offences like criminal harassment, we advocate that the Department of

---

[28] *Schuetze v Pyper*, 2021 BCSC 2209, at para 3.
[29] *K.S.P. v J.T.P*, 2022 BCSC 1017.
[30] *K.S.P. v J.T.P*, 2023 BCSC 1188 at para 308 and 403.

Justice start by centering the experiences of survivors in pre-existing systems and by considering the burdens that survivors must carry to seek safety.

If the Department of Justice proceeds with criminalising coercive control they should look to the Scottish drafting of the offence, as this takes into account abusive behaviours identified by survivors. The current draft of the proposed controlling coercive offence continues to place burdens on survivors to provide evidence of the harm they have experienced rather than focusing on proving elements of the offender's behaviour.

Conclusions and Recommendations

The hope these submissions demonstrate both the complexity of coercive control and the fact that a simple legislative change will not provide safety for survivors. Legislative change needs to be accompanied by both a significant investment in training across law enforcement and the legal system and a commitment to preventive measures and a social safety net that increases the safety of survivors while they engage with the legal system. We do not suggest that there is no place for using family and criminal legislation to address coercive control, but caution that statutory changes alone have not, and will not, be successful at preventing harm. We have provided a specific caution that the Department of Justice should not rely on family law as a sufficient mechanism for addressing coercive control, following comments made at the panel.

We also make the following specific recommendations:

1. We echo Recommendation 12 of *Turning the Tide Together: Final Report of the Mass Casualty Commission* and recommend that the federal government establish an expert advisory panel prior to finalizing any legislation relating to coercive control. The committee must include Indigenous, racialized, and other marginalized experts.

2. We recommend that the federal government draft the wording for any new criminal offence of coercive control only following consultation with the expert advisory panel, and taking into account the gendered nature of coercive control and the experiences of survivors.

3. We recommend that if the federal government proceeds to criminalise coercive control, that it follow the model of the *Domestic Abuse (Scotland) Act 2018*.[31] This legislation is considered a recognized gold standard, in part, because it focuses on the behaviors of the accused person and limits the burden placed on survivors by not requiring the prosecution to prove actual harm.

4. We recommend that if the federal government decides to move forward with the criminalisation of coercive control, that this be done as part of a larger strategy in addressing family and intimate partner violence which includes a significant investment in training of law enforcement and legal system actors.

[31] *Domestic Abuse (Scotland) Act 2018,* 2018 asp 5, <https://www.legislation.gov.uk/asp/2018/5/part/1/enacted> accessed 16 October 2013.

5. Following the failure of criminal harassment to be used in the intimate partner context, we recommend that careful attention is given to the ability to prove each element of the offence and practical application of a potential coercive control offence.

6. We recommend that as part of their examination of solutions to coercive control, the federal government consult with Crown and law enforcement to determine the cause of the underuse of offences including criminal harassment.

7. We recommend that if the federal government criminalises coercive control, that it maintain detailed statistics of any cases of coercive control that are prosecuted to determine whether the new crime is effective, whether it is being weaponized against women and marginalised genders, resulting sentences, and whether breaches of criminal conditions are prosecuted.

We recognize that by criminalizing coercive control, Parliament would be sending a strong message to society that these behaviors are in fact a serious form of violence and deserving of sanctions. We applaud this impulse. However, we advise you to proceed with care by centering the experiences of survivors when crafting a legislative response to a complex social phenomenon that is not widely understood and that is already often minimised or ignored by law enforcement and the legal system. We urge you to draft such a crime to minimise the burden on survivors and to replace or accompany criminalisation with the necessary education and victim supports and services.

Sincerely,

K Hawkins

Kim Hawkins
Executive Director
Rise Women's Legal Centre

Raji Mangat
Executive Director
West Coast LEAF