

The Coercive Control Concept and Application to Court Procedures

Melanie Paddles

Although courts have gradually been adapting when it comes to understanding of gendered violence, the arguments put forth by Janet E. Mosher in the article, *Grounding Access to Justice Theory and Practice in the Experiences of Women Abused by Their Intimate Partners*, still gives insightful commentary in the way that courts have operated as proxies for that violence. It would be interesting to consider how this concept has applied to other categories of criminal cases, and perhaps how there may still be continuous perpetuation. Mosher begins by stating that “women's access to justice is... curtailed by three inter-related phenomena: the enduring hold of an incident-based understanding of domestic violence; the failure of legal actors to curb men's strategic use of legal systems to further their power; and the host of complications that arise when women must navigate multiple intersecting legal systems.” In particular, what is of note is the concept of the coercive controller. Coercive controllers are abusers who are adept at “engag[ing] the power of various legal systems to extend their own power. They threaten (and some individuals act on these threats) to call the police to have their partners charged, to revoke immigration sponsorships... to complain to child welfare authorities about their partners' neglect or abuse of the children.” The endgame is to trigger the involvement of multiple court systems in order to embroil the victim in an expensive, lengthy, and potentially confusing process. In effect, the emotional toll brought on by the trials works to retraumatize the victim. The abuser gets to continue his domestic violence with the justice system as his weapon of choice. Of course, there are laws in place which attempt to curb abuses of the court but there is also the conundrum that individuals are entitled to litigation, and when the reasons for litigation are indiscernible in regard to frivolity, there is no reason to bar them. There is likewise the issue of neutrality. One party cannot be favoured over the other, even if objectively speaking it is clear under the circumstances that only one side has committed terrible offences upon the other. While it is

prudent to note that the phenomenon disproportionately affects women with male partners or where the accused is male, the same process can just as easily be used against other victims in different dynamics. In terms of types of criminal cases, sexual assault trials are a good example where this same concept can apply, particularly as there is a similarly inherent and volatile trauma involved simply by attending court. Criminal trial proceedings that involve sexual assault are difficult to litigate, can be lengthy, and some years ago used to be rife with bias that disadvantaged the victim. Looking at the legislation now, there are provisions that protect against these biases for the most part although there is no doubt that they still make their way into some cases, especially in relation to punishment. This proves that these issues gradually lessen when there is greater awareness occurring in society and therefore legal discourse, but that is precisely why Mosher's article is relevant to consider. Even if the specific issues she brings up has been advanced as well, it serves as an avenue to consider in what other ways the legal system might be imparting the damages they seek to rectify. Like domestic abuse victims, those who have suffered sexual assault must often confront the accused in court. When results are unsatisfactory, some turn to civil court for justice which restarts the entire process again, thus retraumatizing them. Others are forced to contend with the prospect of ADR (alternative dispute resolution), and that comes with its own hurdles. Although it is an effective method for some, particularly to achieve some form of closure or justice where there is none otherwise, the prospect of compromise for a serious offence and lack of retribution is itself another violation. There is also the aspect of appeals, which are and should be allowed to maintain integrity of the system. However, the downside is – as mentioned above – that this could potentially serve to perpetuate the violence. Mosher describes these actions of coercive controllers as being “procedural abuses... legal bullying, paper stalking, paper abuse, and post-separation violence.” In essence, the abuser will bring multiple and frequent motions, dragging out the proceedings to assert control and deplete financial resources. As stated earlier, the visceral reaction of having to face the one who has harmed you is difficult, and

coercive controllers will often self-represent in order to purposefully cross-examine their former partners or victims. Criminal courts give precedent to the physical abuse aspect of domestic violence since it is in relation to evidence, but what is sometimes regarded as minor criminal offenses can still inflict immeasurable damage to victims. Two central offences utilized often by coercive controllers include invasion of privacy and harassment. In some cases, the mental or emotional injury caused is greater than any type of physical abuse, and thus it would be in the best interest of the courts to recognize how that abuse can manifest through the legal system. With that said, law and the justice system are always subject to change, and where there is increase in awareness and a consideration taken, adaptations can be made to combat or lessen the degree of harm. Gradually, there may be a better solution or policy considerations involved that would reduce the re-occurrence of gendered violence through procedural abuses. Although the concept may be more applicable towards, say, family law, it does still impact criminal courts as noted above with the minor offences (especially in conjunction with family division) but also sexual assault trials, and there are potentially other ways in which it may bear upon criminal procedural law if explored.

Sources

Mosher, E. Janet, "General Section: Article: Grounding Access to Justice Theory and Practice in the Experiences of Women Abused by Their Intimate Partners, Yearbook of Access to Justice" (2015) 32:2 Windsor YB Access Just 149