

Roxanne's Law: Protecting Women from Coerced Abortions – Law-Related Question and Answers

1. Why is Bill C-510 necessary if a provision for 'utterance of threats' already exists in the *Criminal Code*?

Section 264.1 of the *Criminal Code*, which criminalizes the utterance of threats, does not specifically criminalize threats that are meant to coerce a female into having an unwanted abortion. Section 264.1 of the *Code* only criminalizes threats of death or bodily harm, threats of damage to property or threats of injury or death of an animal owned by a person.

Bill C-510 makes it clear that using threats to coerce a female or to attempt to coerce a female to procure an unwanted abortion is a criminal offence.

Further, the act of coercion is distinct from and goes beyond the legal concept of uttering threats. In the context of Bill C-510, coercion is an act of intimidation where, in this situation, a person *uses threats* to cause a person to commit a positive action, to undergo an unwanted abortion, and the threats are used as leverage. If she does not procure the abortion, she will suffer the consequences of the threat.

Common law definitions of coercion are generally consistent across Canada. Being found guilty of coercion generally requires a threat or intimidating action *and* an express or implied demand.

2. Why is Bill C-510 necessary if a provision for intimidation already exists in the *Criminal Code*?

Section 423 of the *Criminal Code* outlines the offence of intimidation. It is placed in Part X of the *Criminal Code*, which is titled "Fraudulent Transactions." The offence was intended to apply to industrial disputes, although the language of the section is broad enough to be accorded wider meaning.

That being said, there are many examples of *Criminal Code* provisions that focus on a particular aspect of an offence, highlighting it as especially worthy of condemnation. To do this, Parliament has made use of a separate section dealing with the specific type of offence in question.

One example would be the crime of Assault found at section 265 the *Code*. The definition of assault is intentionally broad, to encompass all forms of assault, and to label such offences as worthy of denunciation.

So, one could ask, "What's the point of having sections that criminalize assault with a weapon, aggravated assault, sexual assault, or assault causing bodily harm when there is already a section in the *Criminal Code* that criminalizes assault?" The answer here is the same as it is with the question of a new and separate section for coercion for pregnant women to abort: this is a specific instance and type of intimidation that deserves special recognition and specific condemnation.

3. Is this law necessary given that there are other provisions of the *Criminal Code* that could potentially apply? Why be so specific?

There is value in including a specific provision in the *Criminal Code* to deal with coerced abortion. While it is clear that coerced abortions occur, it does not appear that a single individual has been charged for committing this act. This indicates a need for legislative clarity.

A specific provision is useful, as some women may not realize that certain actions committed against them could amount to threats, intimidation, or harassment as the law currently defines it. By having a specific law in place, it would raise awareness of this criminal act and women would be more knowledgeable of their rights.

The practice of adding additional, specific clauses to the *Criminal Code* is not new or unprecedented. It is done in order to clarify the law or to identify specific areas of concern. Recent “specification provisions” added to the *Criminal Code* include the provisions dealing with the incitement of hatred against specific groups, or those dealing with spousal or child abuse.

4. Given that there are provisions in the *Criminal Code* which address threats or other acts, could people then be charged twice for the same criminal act?

The *Charter of Rights and Freedoms* protects Canadians charged with an offence from being tried for the offence again, if he or she has already been finally acquitted of the offence. This is known as double jeopardy (*Charter*, s. 11(h)). Therefore, it is not permitted in Canada that anyone be charged and found guilty more than once for the same criminal act.

What Bill C-510 does is provide a specific offence for a specific act. The *Criminal Code* currently only has a broad offence for a very broad range of offences (anything that constitutes intimidation).

5. Will this law criminalize abortion?

This bill will not criminalize abortion in any way. If C-510 is passed, Canada will remain the only developed nation in the world without any abortion legislation. Abortions will remain legal through all nine months of pregnancy. However, for those mothers who choose life, there will be a new protection to assist them in fulfilling their hopes and plans for both themselves and their children.

6. Will it create conflicting rights between the mother and the unborn child?

Bill C-510 will not assign any legal status or personhood to the unborn child. As such, it will not create a circumstance of conflicting rights or an ‘adversarial’ relationship between the mother and child in law.

As recently explained in the B.C. Supreme Court decision of *Ediger vs. Johnston*, in law, mothers do not owe a duty of care to their unborn children. This was determined by the Supreme Court of Canada in both the *Dobson v. Dobson* and *Winnipeg Child and Family Services* cases.

7. Is the concept of ‘coercion’ too broad?

Actually, it is not. This isn’t a new legal concept. The concept of coercion has been considered by courts across the country as well as by the Supreme Court of Canada in 1985. It has been defined and applied in various contexts.

The definitions given by the courts, including that of the Supreme Court of Canada, generally include the concepts of compulsion, control and force coupled with threats of physical and economic harm or of limiting another person’s options. The same definitions often explicitly exclude rational discourse, discussion, or debate. Contextual factors are important and are considered carefully. The coercion bill has defined this term with a clear, unambiguous definition.

8. How would one prove or disprove that an act of coercion took place?

As the concept of coercion has been applied in other legal contexts, legal tests and standards are already in place in Canadian law to determine the standard of proof necessary for a finding of guilt. Contextual factors would play an important role in such a determination. The first few legal cases addressing this new provision would be important, as historically, this is where greater clarification of a narrowed concept has taken place, as is normally the case with any new section being added to the *Criminal Code*.

Remember that in Criminal Law, to prove a criminal charge, the prosecutor must prove *beyond a reasonable doubt* (a high standard) both that the act of coercion took place (called the *actus reus* element) and that the person who committed the act had the intention to commit the act (called the *mens rea* element).

9. According to this bill, a person who removes the financial support from a pregnant, dependant woman who refuses to have an abortion can be found guilty of coercion. Is this true?

Yes it is. Hypothetically, a father who threatens to kick his teenage daughter out of the house unless she has an abortion could be found guilty of coercion. His daughter should have the choice to carry her baby to term, if she chooses.

There are two important factors to consider in the case of threats to the support of a dependent. First, the determination is made very carefully by courts as to whether a person is considered a dependent of another. The courts make such determinations based on the facts of every individual case. Also, and importantly, in Canadian law there is no legal presumption of dependency simply because of a legal obligation to support.

10. What are the legal consequences under this bill for someone who commits this offence?

A person who is found guilty of coercing an unwanted abortion can face a *maximum* of five years of imprisonment. Sentences are determined by judges based on the individual circumstances of each case, with consideration of all mitigating and aggravating circumstances. Other possible sentences include a conditional sentence, a suspended sentence, probation, or simply a fine.

11. How would this change the *Criminal Code*?

If this bill is passed into law, it will amend section 264 of the *Criminal Code* (the section that deals with assaults) by adding a new provision that would criminalize the coercion of unwanted abortions.

12. Will this Bill threaten the existence or practices of abortion providers or their clinics?

No. Bill C-510 cannot be used to prosecute abortion providers. The bill specifically states that it will not apply to physicians who counsel their patients to abort for medical reasons.

The only exception is where an abortion provider engages in action to coerce a woman into having an unwanted abortion, which would be a matter that would have to be proven in a court.

13. What about speech that is uttered? Is this not a violation of the right to free speech?

In both its definitions of 'coercion' and 'threat', Bill C-510 sets out that speech that is protected by the *Charter of Rights and Freedoms* is exempted. That being said, not all speech is protected by the *Charter* (see for example the criminal prohibition against utterances of death threats, section 264.1 (1)). Similarly, coercive threats against a woman should be properly dealt with by the courts.

14. Is Bill C-510 constitutionally sound?

This bill would likely survive a constitutional challenge for a number of reasons. It does not limit or burden health care providers, nor does it limit or violate any other right or freedom. It is consistent with the *Charter's* right to life, liberty and security of the person as women should have the right to carry their child to term safely.

The legislation is clear and unlikely to be found by the courts to be vague or overbroad. Terms are defined at length in order to assure limited and appropriate application and enforcement.

Speech that is protected by the *Charter* is specifically excluded in the bill. Physicians who recommend abortion to a patient for medical reasons are specifically exempted from the bill's application.

Further, the Supreme Court of Canada has considered the meaning of coercion on at least two occasions and defined it in the 1985 *R. v. Big M Drug Mart* decision. Coercion is a legal concept that has been accepted in Canadian law many times over. The protection of women from coercion to abort is demonstrably justified in a free and democratic society.