

LEGAL BULLETIN

Issue No. 33

Coercive control and its impact on the exercise of parental authority and the use of a surname in court decision *2024 QCCS 1392 Droit de la famille — Droit de la famille —24291, 2024 QCCS 1392*([CanLII](#))

Introduction

Coercive control is a form of domestic or family violence that has a negative impact on the lives of its victims. Far from providing “snapshots” of the victims’ lives, it acts like a “film”¹ that extends over time and continues to haunt those who have been subjected to such violence, even after its constituent acts have been carried out. Given that the criminalization of coercive control is currently the subject of Bill C- 332² before the Senate, we thought that it would be useful to devote this legal bulletin to this concept, which is not foreign to family law. To that end, we will analyze a family law decision rendered by the Superior Court, district of Joliette (2024 QCCS 1392). In analyzing the operative



part of the decision, the emphasis will be placed on coercive control and its impact on parental authority, as well as the use of a surname by the child of the perpetrator of the moral or psychological violence.

¹ Amelie Lamontagne, *Criminalisation du contrôle coercitif : état des lieux, webinaire*, September 26, 2024 .

² *Act to amend the Criminal Code*, Bill C-332, 1st Session, 44th Parliament (Can).

Context

This decision highlights acts of physical violence, sexual violence, economic violence and coercive control in a common-law relationship between plaintiff A and her spouse B.

Plaintiff A was in a relationship with B from December 2017 to March 2021. X was born of this union in 2020. A considers herself to be a victim of family violence and coercive control.

She claims to have been subjected to several forms of violence by B. He allegedly forced her to have sexual relations with him and often with C, B's second partner. He intoxicated himself with a strong drug called crystal meth and forced A to use it as well. According to A, B's violence was not limited to her and C. B was also violent towards the other women involved in the filming of his pornographic scenes. According to A, she was constantly subjected to threats, reprisals and psychological and emotional coercion. She maintains that B regularly monitored the contents of her mobile phone. For B, this was a systematic process of control to make her dependent on him.

A, who could no longer bear the trauma, decided to end her life by attempting suicide. She did not succeed thanks to C, B's other partner, who came to her assistance.

She said that these acts of violence had also occurred in the presence of child X, which could have a negative impact on him. B allegedly fractured A's finger in front of their child X and filmed pornographic scenes in her presence. Furthermore, B is not present in his children's lives, especially X's life. He last saw his son X when he was five (5) months old. On the basis of the foregoing, A requested that B be totally deprived of his parental authority and that X's name be changed.

B has an extensive criminal record; from September 2020 to July 2022, he was convicted of several criminal charges, including sexual violence, assault, assault with a weapon, mischief and other such crimes. He did not question A's claims, and seemed to take pride in some of his sexual practices. However, he said that he regrets the harm done to his victims. He mentioned his desire to change and asked to be given the opportunity to prove that he can transmit good values to his son.

As is clear from the plaintiff's claims, the Court was asked to rule on the

application that B be totally deprived of his parental authority and that X's name be changed.

A) Application for the total deprivation of B's parental authority

- 1) "Serious grounds" constituting family violence on the part of B exist

In its decision, the Court stated that B had in fact committed acts of sexual violence, physical violence, coercive control and economic violence. It paid particular attention to coercive control, which is often difficult to prove. B exerted an "unhealthy influence" on his victims, in particular A and C.

With regard to A, B has carried out acts of coercive control through "his morbid jealousy," use of "derogatory remarks," "initial refusal of X's paternity," "death threats," "submission to tyrannical rule," forced drug use and its effects, and so forth. The Court used the expression "intimate terrorism" to refer to the abuse of power, manipulation and domination that B exercised over A with the aim of isolating her and making

her submit to his demands. The negative impact of these acts on the mental state of victim B is undeniable. What are the consequences for the interests of child X?

- 2) The interests of child X are threatened by contact with his father B.

In the present case, the ruling on the total deprivation of B's parental authority in the best interests of X led the Court to answer the following question: "Does the conduct of the drug-addicted and violent parent in question entail a risk of harm to the child that outweighs the potential benefits to the child of a healthy relationship with that parent?"³

In response to this question, the Court referred to article 33 of the *Civil Code of Québec*,⁴ which requires a priori intervention rather than certain harm to the child's

³ Interrogative form of the problem raised in the decision analyzed, *A c. B*, 2024 QCCS 1392.

⁴ *Civil Code of Québec*, SQ 1991, c. 2, art. 33, (herein after "CCQ").

well-being. As the Court pointed out, X is less than 4 years old, and at that age he is dependent on those around him, who exert a major influence on the development of his personality. Having said that, the Honourable Justice Pierre Hamel mentioned the factors that could compromise the child's safety and development. These include “the serious risk of sexual abuse due to an inappropriate climate maintained by the parents,” “the risk of physical abuse resulting from the father's unresolved history of violence,” and “the risk of neglect resulting from the father's social adjustment and drug addiction problems.”

In this case, B was not embarrassed to

expose X to pornographic scenes and scenes of violence against his mother A. The images that B presented to demonstrate his attachment to his son rather reveal a neglect of X. To date, A is the one who has developed a feeling of attachment to X. Thus, X's emotional stability is linked to that of A. There is no doubt that “B's presence in A's life will have a negative impact on X and on A, who is trying to rebuild her life after the violence to which she has been subjected.” Furthermore, B's desire to change and become a beneficial person in the life of his son X did not appear sincere to the Court. The Court concluded that it was in X's best interests that the father be totally deprived of parental authority.

B) X's application for a change of name is granted

The Court granted A's application to change X's surname. It based its decision on article 65 of the CCQ.

This article gives the court the power to authorise the change of a child's name in the event of deprivation of parental authority. That said, the potential impact of this change in identity must be taken into account before the decision is pronounced.

In this case, the Court stated that the change of X's name was part of the

protection of his overriding interests. X is less than four years old and has not seen his father since he was five (5) months old. There is no relationship between X and his father, so the name change will have no impact on the child's identity. Therefore, the application to change X's name was granted.

Conclusion

In the wake of our analysis, the Court took into consideration the suggestion of the Honourable Justice Suzanne Côté in *Barendregt*.⁵

[TRANSLATION]

[71] [...] “Coercive control” phenomenon will henceforth have to constitute not only an aggravating circumstance in the assessment of parental capacity, but also an important factor in assessing the evidence underlying the notion of “serious grounds” in an application for deprivation of parental authority and just as important in determining the best interests of the children.⁶

It was this measure that the Court applied. Because of the seriousness of the coercive control exercised by B over A and the harm to X's best interests, the Court ordered that B be totally deprived of parental authority and that X's name be changed.

⁵ *Barendregt v. Grebliunas*, 2022 CSC 22.

⁶ *A v. B*, 2024 QCCS 1392, par. 71.

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