

LEGAL BULLETIN

Issue No. 34

Past family violence evidence can give rise to criminal consequences

Introduction

“Past discreditable conduct evidence” is evidence of an accused’s misconduct beyond what is alleged in the offence and is typically inadmissible.¹ This can be thought of as “bad character” evidence which is generally excluded to avoid punishing an accused for past misconduct that is unrelated to the offence allegedly committed.² For example, an accused’s history of shoplifting would be considered past discreditable conduct evidence in the context of a human trafficking charge. In *R v TJF* (2024) the Supreme Court of Canada (SCC) explained that an accused’s violent behavior towards their intimate partner may not be “past discreditable conduct” and may instead be relevant to a charge of human trafficking.



Background

TJF and the victim were in a common law relationship from 2002 to 2012. Their relationship was characterized by family violence, evictions, and financial difficulties. The couple relocated multiple times, from Halifax, to Fort Saskatchewan, to Edmonton, then returned to Halifax. While in Fort Saskatchewan, the accused suggested that the couple have sex on a webcam for money. The victim testified that she was unwilling to participate but did so to avoid the accused’s violence. The victim testified that the accused then arranged for her to provide sexual services for money, and that she participated because of the accused’s violence. The accused posted ads offering sexual services and accompanied the victim to every client interaction and watched while she worked. TJF kept all the proceeds and gave the victim only enough to pay a few bills. The victim testified

that TJF physically abused her almost every day and would threaten her children in order to gain her compliance.

The accused was charged with human trafficking and receiving a material benefit from human trafficking contrary to sections 279.01(1) and 279.02(1) of the *Criminal Code*. To convict under these provisions, the Crown must prove that the accused “exercised control, direction, or influence” over the complainant “for the purpose of exploiting them or facilitating their exploitation.” The accused was acquitted at trial. The trial judge found that the accused’s violence towards the victim was past discreditable conduct and presumptively inadmissible. The trial judge found that the victim’s testimony lacked credibility.

¹ *R v TJF*, 2024 SCC 38 at para 75 [TJF].

² *Ibid* at para 76.

Supreme Court of Canada Decision

A majority of the Supreme Court of Canada set aside the acquittals and ordered a new trial. Justice O’Bonasawin, writing for the majority, held that the trial judge erred in determining that the evidence of violence and threats of violence by the accused towards the victim was past discreditable conduct. While evidence of past discreditable conduct is generally inadmissible, where the evidence relates to misconduct alleged in the indictment, it should be admitted. Here, evidence of the accused’s violence and threats of violence against the victim were relevant to whether the accused “exercised control, direction, or influence” over the complaint and whether “exploitation” occurred. The majority found that the trial judge’s failure to properly consider the evidence of violence and threats of violence undermined the trial judge’s assessment of the victim’s credibility and called into question his decision to acquit the accused.

Justice O’Bonasawin provided helpful guidance on the meaning of “control, direction, or influence” in the human trafficking provisions of the *Criminal Code*. These elements relate to the degree of power an accused exerts over the victim’s movements, and they exist on a spectrum. “Control” refers to the degree of power the accused exercises over the victim and leaves the victim with little choice over their movements. This definition shares features the concept of “coercive control”, which was not addressed in the decision. Coercive control is a pattern of conduct that has the purpose or effect of substantially restricting the survivor’s safety or autonomy through the use of force, intimidation, implicit or explicit threats, or by compelling compliance in another way. TJF’s conduct fits the definition of coercive control.

Implications

R v TJF is an important case on the relevance of intimate partner violence, and especially coercively controlling violence, to human trafficking provisions of the *Criminal Code*. The case demonstrates how patterns of abuse can give rise to criminal consequences. This is especially important given that a proposal to criminalize coercive control is currently before Parliament (*An Act to Amend the Criminal Code, Bill C-322*).

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