



The need for a Canadian *Criminal Code* offence of coercive control

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ABSTRACT

Canada is currently considering legislating an offence of coercive control. Coercive controlling behaviour is currently criminalized in the UK, Scotland, Ireland, Northern Ireland and New South Wales, Australia. Potential benefits of the implementation of a coercive control offence in Canada include enhancing victim/survivor safety with access to protective orders; allowing police to respond in situations where physical violence is not occurring and, importantly, respond in a way that is reflective of the type of violence being enacted and the assessed risk; moving beyond an incident-based view of intimate partner violence to recognize patterns; improving perpetrator accountability and opportunities for risk management; sending a clear message that these behaviours are unacceptable; enhancing public awareness of coercive control; bringing the *Criminal Code* in line with other recent legislation; and creating consistency between family and criminal courts. This article summarizes the concept of coercive control, including gendered implications and risks for domestic homicide; the need for a coercive control offence, including support from professionals; and guidance for the implementation of a coercive control offence, including promising practices from international legislation, risk assessment, training for police and other professionals, and evaluation and data gathering.

Key Words Coercive control; intimate partner violence; domestic violence; Criminal Code of Canada; police response.

INTRODUCTION

Legislation criminalizing coercive controlling behaviour is in place in the UK (2015), Scotland (2018), Ireland (2018), Northern Ireland (2021) and New South Wales, Australia (2022). In 2021, a Private Member's Bill (C-202; *An Act to amend the Criminal Code [controlling or coercive conduct]*) was introduced in Canada's House of Commons but did not make it to the second reading. Another Private Member's Bill by the same name (Bill C-322) was introduced in May 2023 and is currently undergoing the second reading in the House of Commons.¹ In the fall of 2023, the Department of Justice Canada consulted with survivors, advocates, and researchers regarding a potential coercive control offence.²

¹As of 5 December 2023.

²This article is a shorter version of a written submission provided by the author to the Department of Justice Canada (11 October 2023). This article also includes elements of the author's presentation to the Department of Justice Canada (21 September 2023) as part of this consultation.

Coercive control is a pattern of behaviour, consisting of various actions by the perpetrator. Behaviours occur on a continuum and may or may not occur in conjunction with physical and sexual violence (Dutton & Goodman, 2005; Johnson, 2006; Myhill & Hohl, 2019; Stark, 2007). The Saskatchewan Police Commission's (2018) *Domestic Violence Risk Indicator Checklist* states that coercive control "may include acute jealousy, degradation, micro-regulation of daily life, social isolation, disallowing independent thinking or decision-making, deprivation, surveillance, forced sex, sexual exploitation, shaming, forced adherence to a belief system that condones [intimate partner violence] IPV, intimidation, [and] threats."

In some cases, perpetrators completely dominate all aspects of the victim's life. Coercive control often results in a constant state of fear, reinforced by threats as well as past experiences of violence. Dutton and Goodman (2005) explain ways that perpetrators control victims, including "creating the expectation of negative consequences, creating or exploiting the victim's vulnerabilities, wearing down the victim's resistance, and facilitating—and then exploiting—emotional

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dependency” (pp. 748–749). The very nature of this form of abuse creates significant barriers to ending the relationship.

In a study conducted with survivors of IPV in Saskatchewan, one woman shared:

“It was nothing physical; it was all emotional. Basically, I wasn’t allowed to go anywhere. I could go to work. I could go to the store, [but] I had to report what store I was going to. I couldn’t be too long. I would get yelled at and in big trouble. It was demeaning, and [I was] ridiculed, and I felt like a small child if I was late. My contact with my family was severely frowned upon. I couldn’t talk to my sister. If I did, I was yelled at: “Why?” and “What did you talk about?” He would check my phone to see who I texted throughout the day. I didn’t have friends. . . I could do work during work time, but I couldn’t do functions or anything after hours. . . I was never left alone. I was never allowed to be myself” (Giesbrecht et al., 2023c, p. 7).

Evan Stark (2007) stated that coercive control is a “liberty crime” against women, as victims are often trapped in a relationship with a perpetrator/partner who regulates their day-to-day activities. In many cases, this means that victims’/survivors’ ability to participate in the workforce and secure their own future economic stability is undermined. Coercive control can have serious health implications when access to food, medications, or services is restricted.

In a study with newcomer women survivors of IPV in Saskatchewan, one of the women explained, “And you basically [cannot] go out . . . if you need pads, you just have to wait for him. I just depended on him. Everything. If there’s no milk, there’s no water; there’s nothing. I had no freedom.” She also described how her partner intentionally created barriers to her being able to access services, limiting her ability to gain independence from him: “You know, living with him was so hard, and at the same time, I lost . . . my world became so very small. No papers. I have no driver’s license. I have no health card” (Giesbrecht et al., 2023a, p. 14).

The Need for a Coercive Control Offence

There are several benefits that could be expected to accompany the implementation of a coercive control offence in Canada, including enhancing victim/survivor safety with access to protective orders; allowing police to respond in situations where physical violence is not occurring and, importantly, respond in a way that is reflective of the type of violence being enacted and the assessed risk; moving beyond an incident-based view of IPV to recognize patterns (Aspinall & Gill, n.d.; Gill & Aspinall, 2020; Mandel & Wright, 2019); improving perpetrator accountability and opportunities for risk management; sending a clear message that these behaviours are unacceptable; and enhancing public awareness of coercive control. An offence of coercive control would bring the *Criminal Code* in line with other recent legislation, including Bill C-233 (*Keira’s Law*; 2023), the amended *Divorce Act* (2020) and accompanying provincial legislation, and aid in creating consistency between family and criminal courts.

Coercive control is a pattern of many small actions which add up to a significant amount of harm and a high level of dangerousness, but on their own, a few of these behaviours would be considered a crime. Some of the

most damaging behaviours used by perpetrators, including degradation, taking away victims’ freedom, denying any opportunities for autonomy and micromanaging their daily lives, are not currently illegal. An offence is necessary to effectively protect survivors and to convey that these behaviours are not only unacceptable but also criminal and will be taken seriously.

Additionally, there is often a perception that the abuse ends when the relationship does. In fact, the tactics of coercive control can continue to impact the adult victim and any children long after separation. Failure to pay child or spousal support, false reports to social services, false claims of parental alienation, and undermining the parenting of the protective parent are just a few of the forms that post-separation coercive control can take. The criminalization of coercive control can make this form of abuse evident and stipulate consequences for those who use these behaviours, allowing survivors of IPV to be truly free from abuse.

Support from Survivors and Professionals

Researchers in Australia surveyed women survivors of IPV; over 90% stated that they believed coercive control should be a criminal offence (Fitz-Gibbon et al., 2023). The majority of these survivors agreed that criminalizing coercive control would enhance public awareness of coercive control, send a clear message that these behaviours are unacceptable, allow police to respond, enhance victim/survivor safety and improve perpetrator accountability.

In September 2023, PATHS consulted IPV professionals who work at domestic violence shelters and services in Saskatchewan; all of those who responded stated that they were in support of a coercive control offence. All of these IPV professionals had worked with survivors of coercive control who could not access legal mechanisms (e.g., reporting to police, their partner being charged, being granted a protective order) or faced other barriers to services or support because they did not experience physical violence or other criminal behaviours from their partners. One explained, “. . . some police we have worked with completely recognize coercive control is happening, but they are still limited in the actions they can take due to it not being a criminal offence.”

Professionals who deliver treatment for perpetrators of IPV in Saskatchewan reported that the majority of participants enter treatment because they are court-mandated after perpetrating a chargeable offence. This means that perpetrators who have not used physical violence usually do not come to the attention of treatment providers. An offence would provide the opportunity for individuals who are perpetrating coercive controlling abuse and could be at risk of perpetrating domestic homicide to be mandated to treatment and appropriate risk management conditions such as supervision (Giesbrecht et al., 2023b).

Domestic Homicide

Researchers and domestic violence death review committees (DVRDs) have documented cases where women were killed by their partners or were at risk of being killed, even though no previous physical violence occurred (Campbell et al., 2003; Monckton Smith, 2021; Nicolaidis et al., 2003; Office of the Chief Coroner for Ontario, 2019). A study of 358

domestic homicides of women by male perpetrators in the UK (2012–2014) found that stalking behaviours (including obsession (94%) and fixation (88%)) were present in 94% of the cases, controlling behaviours were present in 92% of the cases and isolation was present in 78% of the cases. Other high-risk factors, including strangulation (24%) and threats to kill (55%), were documented in fewer cases (Monckton Smith et al., 2017). Canadian Broadcasting Corporation (CBC) journalists (Carman et al., 2021) compiled a database containing information on 392 intimate partner/domestic homicides that occurred in Canada between 2015 and 2020; in 15% of these cases, there was a known history of coercive control. A US study by Campbell and colleagues (2003) found that the risk of intimate partner femicide increased significantly in cases where the abusive partner was highly controlling; in cases where the abuser was highly controlling and the couple had separated after living together, the risk increased 9-fold.

The Canadian Femicide Observatory for Justice and Accountability identified “four common measures of coercive control: controlling/proprietary behaviour (specific to the perception of ‘women/girls as property’), psychological abuse, sexual jealousy; and stalking,” noting that these behaviours “often go unnoticed as red flags for the femicide that ultimately occurs” (Dawson et al., 2020, p. 47). DVDRCs have also identified the perpetrator “control[ling] most or all of the victim’s daily activities” as a risk factor for domestic homicide (Office of the Chief Coroner for Ontario, 2019).

Coercive Control and Risk to Children

Child abuse often co-occurs with IPV (Herrenkohl et al., 2008; Wathen & MacMillan, 2013); concurrent abuse of child and intimate partner victims is especially prevalent in situations of coercive control (Kelly & Johnson, 2008). Coercive controlling behaviour has been identified as a risk factor for children (David et al., 2017; Hardesty et al., 2008; Jaffe et al., 2014, 2023; Kelly & Johnson, 2008) and is clear in the histories of fathers who killed their children. One of these horrific cases included that of 6-year-old Chloe and 4-year-old Aubrey Berry, who were killed by their father on Christmas Day in 2017. The girls’ mother presented evidence of coercive control—and therefore, the risk of future violence and domestic homicide—to the court; however, there was a failure to recognize this risk (Chambers et al., 2018; Cheek, 2023). This is similar to the experience of Jennifer Kagan, whose ex-partner engaged in coercive controlling tactics during their relationship and killed their daughter Keira in a murder-suicide in 2020, more than 3 years after separation (Cheek, 2023).

Gendered Implications

While people of any gender can perpetrate or experience coercive control (Johnson, 2006), the phenomenon is specifically gendered (Johnson, 2006; Johnson et al., 2014; Hearn, 1998; Kelly & Johnson, 2008; Schechter, 1982; Stark, 2007). Hearn (1998) described how power dynamics within relationships can be seen as part of “‘normal’ family life” (p. 36). Some behaviours, which may be unproblematic (or appear unproblematic) on one end of the spectrum, can be part of a pattern of extreme control on the other end. Harm can be compounded when multiple forms of control are employed in conjunction.

Some coercive and controlling men may enact physical violence frequently; others may resort to physical violence when women resist or fail to comply with rules set out by the abuser or when other strategies to maintain compliance have failed. As Dutton and Goodman (2005) explained, “Coercive control in [IPV] is a dynamic process linking a demand with a credible threatened negative consequence for noncompliance” (pp. 746–747). Women’s attempts to control men are rarely as “successful,” given gendered power dynamics and that it is rare that women enact (and enforce) credible threats of inflicting severe physical or sexual violence or withholding financial resources or access to the necessities of daily life (Bishop & Bettinson, 2018; Dutton & Goodman, 2005; Stark, 2007).

In a US study using national population data that included victims, perpetrators and people who did not use/experience IPV, Johnson and colleagues (2014) identified that 5% of women in their sample could be classified as using coercive controlling violence. A UK study using a similar methodology classified 6% of abuse reported by male respondents by female perpetrators as coercive control (Myhill, 2015). Men perpetrated these forms of violence at 22% (US; Johnson et al., 2014) and 30% (UK; Myhill, 2015). Consistent with what we would expect to see based on scholarship on coercive control (Johnson, 2006; Johnson et al., 2014; Hearn, 1998; Kelly & Johnson, 2008; Schechter, 1982; Stark, 2007), the vast majority of individuals convicted for controlling or coercive behaviour offences in the UK 2016–2019 were male, ranging between 97% and 99% (Home Office, 2021). Examining data from one police force in England, Barlow et al. (2020) found that 96% of victims were women and 95% of perpetrators were men. It is to be expected that the gender of victims and perpetrators identified after the implementation of an offence in Canada will be similar to that in the UK.

While the language in legislation may be gender-neutral, it is important to recognize that decades of research on coercive control have illustrated that men are overwhelmingly the perpetrators of coercive control, while women are overwhelmingly the victims. Given the gendered nature of coercive controlling violence and the fact that coercive control is primarily a form of men’s violence against women, scholars have raised concerns about the gender-neutral language of legislation in other jurisdictions (Barlow et al., 2020; Stark & Hester, 2019).

Some advocates have raised concerns regarding criminalizing coercive control, citing fears that this legislation will be used against victims/survivors (Fitz-Gibbon et al., 2023). With adequate training in recognizing and assessing the dynamics of coercive control, Canadian police can identify the primary aggressor, as has been demonstrated by police in other jurisdictions. It is rare for two partners in a relationship to both perpetrate coercive control (mutual violent control; e.g., Johnson, 2006; 3% of the sample); therefore, data from Canada after the implementation of a coercive control offence should not show gender parity. Given that the basis of coercive control lies in an extreme power imbalance within the relationship, often resulting in the perpetrator’s complete control and domination over the victim, there is, by definition, a primary perpetrator of the abuse. “Dual charging,” should not occur in cases where a criminal charge of coercive control is being laid.

Assessing Coercive Control

Coercive control is a pattern of behaviour, including acts that occur on a spectrum of severity and some that may not be considered harmful if not viewed in the context of the relationship and other co-occurring behaviours. Recognizing, investigating, and intervening in situations of coercive control requires a fundamental change in approach to focus on the perpetrator's pattern of behaviour and tactics and the impact on the victim(s). An offence of coercive control is not simply another avenue for charging IPV; it is a way to identify behaviours that are qualitatively different and pose a significant level of harm to victims and indicate risk for future danger.

Laws in other countries demonstrate that it is possible to create legislation that recognizes the pattern-based nature of coercive control, collect evidence of this behaviour, effectively prosecute perpetrators, and offer support to survivors. Evidence from England shows that coercive control legislation has facilitated police responses to IPV that would not have constituted an offence prior to the legislation (Barlow et al., 2020). Notably, Scotland reported conviction rates over 90% in 2020–2021, demonstrating that it is possible to effectively gather evidence and get convictions for coercive control offences (Government of Scotland, 2022). Some advocates have expressed concern that the need to provide evidence of the perpetrator's actions will place an additional burden on survivors. Conversely, an expected benefit of an offence of coercive control is that it will provide survivors with an opportunity to bring forward evidence of what they have experienced, where there currently is no legal avenue to do so.

When police attend situations where intimate partner/domestic violence is occurring, they assess risk. Municipal police and Royal Canadian Mounted Police have identified coercive control as a risk factor in their risk checklists. Saskatchewan's *Domestic Violence Risk Indicator Checklist*, for example, lists coercive control as one of eight risk factors. Their detailed definition (shared in Saskatchewan Police Commission., 2018, Appendix A) has been included on the checklist used by municipal police in this province since 2018, demonstrating awareness by police services and frontline officers of the concept of coercive control. Despite identifying when coercive control is taking place, noting the risk, and discussing this with victims, police currently do not have tools available to address perpetrators of coercive control or offer protective measures to victims.

Researchers (Barlow et al., 2020; Gill & Aspinall, 2020; Myhill & Hohl, 2019) have highlighted the need for validated risk assessments, used by police and other IPV professionals, that take coercive control into account. While validated IPV risk assessments currently used in Canada do not include coercive control, police-academic partnerships examining the incorporation of coercive controlling abuse in IPV risk assessment are currently underway in three provinces (Common Language for Intimate Partner Violence Risk Appraisal, CELIA, 2023; Hilton & Jung, 2023).

Constructing an Offence of Coercive Control for Canada

Canada is in the advantageous position of being able to learn from other jurisdictions. Scotland's legislation (2018)

provides that the court is always required to consider the implementation of a non-harassment order. A Canadian law should include the automatic application of protection orders for adult and child victims of coercive control without the requirement of an application to initiate the process.

It is necessary to add children as potential direct victims of coercive controlling behaviour, whether they are the child of the accused, the child of the victim, a shared child or another child who is under the care of either the accused or the victim. While the Scottish legislation includes a definition of abusive behaviour that includes behaviour directed at a child and aggravation in relation to directing abusive behaviour toward a child, Dr. Marsha Scott from Scottish Women's Aid has stated that Scottish IPV experts and advocates wanted to see it included in legislation that when a parent is victimized, their child is automatically a co-victim. Inclusion of children in this way would assist in preventing danger to children when family courts do not take IPV against their mothers seriously. It is well documented that even after family courts in Canada find that IPV has occurred, a child can still be ordered to have unsupervised time with the abusive parent. (Sheehy & Boyd, 2020). In Dr. Scott's view, the current wording of provisions around children in Scotland could be strengthened (Marsha Scott, Scottish Women's Aid, personal communication, October 9, 2023).

Legislation in Scotland, Ireland, Northern Ireland, and New South Wales, as well as Private Member's Bills C-202 and C-332, includes the "reasonable person" test, stating that a reasonable person would consider the course of behaviour to be likely to cause harm. This wording is preferable to that of the UK legislation, which states that the perpetrator "knows or ought to know that the behaviour will have a serious effect" on the victim. Language regarding the impact on the victim, such as is detailed in the UK legislation, could strengthen legislation implemented in Canada; however, this should be included using "or" along with a list of tactics that may be used by the perpetrator. Therefore, it will not be necessary to demonstrate harm to the victim to hold the perpetrator accountable for their behaviour.

It is also necessary that legislation define coercive control, including tactics and behaviours, and identify the ongoing, patterned nature (e.g., "a course of behaviour," "a range of behaviours"), as in Scotland's *Act*, which includes making the victim dependent on, or subordinate to the perpetrator; isolating the victim from friends, relatives or other sources of support; controlling, regulating or monitoring the victim's day-to-day activities; depriving the victim of or restricting the victim's freedom of action; and frightening, humiliating, degrading or punishing the victim. Further description, including mention of harm to pets through directed behaviour or omissions (e.g., failure to feed), is included in the Explanatory Notes to the legislation. The Government of the UK (The Crown Prosecution Service, 2023) provides a detailed list of 32 behaviours, including, for example, "enforcing rules and activity which humiliate, degrade or dehumanize the victim; taking wages; reproductive coercion; reputational damage; withholding and/or destruction of the victim's immigration documents; [and] threatening to place the victim in an institution against the victim's will." The guidance further explains that "This is not an exhaus-

tive list and prosecutors should be aware that a suspect will often tailor the conduct to the victim, and this conduct can vary to a high degree from one person to the next. Prosecutors should consider the conduct of the suspect in each individual case to assess whether it discloses controlling or coercive behaviour” (The Crown Prosecution Service, 2023). Canada should include similar language in legislation and accompanying guidance.

Implementation, Training and Evaluation

It is necessary, beyond the creation of a new offence, to create a strategy for effective implementation, including training for police (Gill & Aspinall, 2020) and other professionals who work with victims and perpetrators of coercive control, such as legal professionals (including lawyers and judges), and child protection workers. This is necessary to ensure that all professionals share a common understanding of the concept of coercive control (Barlow et al., 2020; Bishop & Bettinson, 2018) and how to respond effectively in terms of legal mechanisms and safety and support for survivors. The training must include certain elements, including the identification and documentation of coercive control. Training on the dynamics of coercive control must also include awareness of the way victims of coercive controlling abuse may present—for example, victims may doubt their own abilities or experiences and display symptoms of trauma. Training must include input and delivery by IPV experts, with ongoing training with periodic updates offered after implementation.

Some advocates have expressed concern that victims/survivors from racialized communities will be negatively impacted by the implementation of additional laws, including a coercive control offence. As Dr. Marsha Scott from Scottish Women’s Aid has clearly articulated, if the key issue is systematic racism within the legal system, this issue must be addressed, regardless of the implementation of a new offence. It is imperative to work towards ensuring that existing laws are not applied in ways that differentially impact survivors from marginalized groups.

Data regarding the offence of coercive control must be collected from police forces and courts and analyzed early, and on an ongoing basis, after implementation to ensure that the offence is working as intended. Disaggregated data are essential for understanding if there are differences in implementation in urban and rural settings, among provinces and territories, as well as among diverse survivors and perpetrators (e.g., race/ethnicity, gender, age). Research with survivors will be essential to inform how the new offence is impacting outcomes, and front-line service providers will provide important insight into how the offence is impacting practice. Improved methods of risk assessment that take coercive control into account (e.g., CELIA, 2023; Hilton & Jung, 2023; Myhill & Hohl, 2019) and training for police and other justice system professionals will improve the consistency of documentation of and response to coercive control.

CONFLICT OF INTEREST DISCLOSURE

The author has no conflicts of interest to declare.

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