

**Submission to the House of Commons Standing Committee on Justice and Human Rights:
Study on Bill C-247
An Act to amend the Criminal Code (controlling or coercive conduct)**

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Context¹

Intimate partner violence is a widespread societal issue around the world encompassing physical violence, sexual violence, emotional abuse, and controlling behaviours as part of the dynamic of abuse (World Health Organization, 2014). From a criminal justice perspective, it is difficult to recognize certain behaviours as being part of an intimate partner violence dynamic. This is the case with coercive control that does not necessarily involve physical violence or a single incident but instead consists of repeated and continuous patterns of behaviour that occur over lengthy periods of time. In 2015, England and Wales introduced the first coercive control criminal offence in the world making it illegal (Barlow et al., 2019; Home Office, 2015). In Canada, coercive control is not captured within the Criminal Code making this type of behaviour completely hidden from a justice system response. Intimate partner violence is multidimensional in nature and encompasses numerous subtle forms of violence such as coercion and threats, economic or emotional abuse, intimidation, or isolation.

In this brief we are defining coercive control and explaining the difficulty in addressing coercive control from a law enforcement perspective.

Defining Coercive Control

Coercive control encompasses acts of both coercion and control through the use of force, deprivation, humiliation, intimidation, exploitation, isolation, and domination. This is done to produce a victim's obedience, ultimately eliminating their sense of freedom in the relationship. Evan Stark refers to this as "entrapment" (Stark, 2007; Stark & Hester, 2019). This type of violence is continuous and resulting harms are cumulative over time; therefore, unable to be explained by a single event (Stark, 2007). The intent is to remove the victim's sense of individuality, autonomy, liberty and capacity to make decisions for themselves, effectively trapping them in their personal lives (Arnold, 2009; Stark, 2007).

¹ In this brief, we are using sections from: Gill C and Aspinall M (2020) Understanding coercive control in the context of intimate partner violence in Canada: How to address the issue through the criminal justice system? Report for the Office of the Federal Ombudsman for Victims of Crime, Department of Justice Canada.

Following the criminalization of physical violence against an intimate partner, perpetrators must now resort to increased surveillance and other covert strategies to micro-regulate the activities of their victim (Anderson, 2009) to remain undetected by the criminal justice system. This micro-regulation is frequently associated with traditional gender roles and the division of labour in which women are stereotypically more passive, dependent, and responsible for household and childcare duties (Anderson, 2009; Arnold, 2009; Stark, 2007). Gendered patterns of socialization, traditional roles of masculinity that emphasize control and responsibility to pursue a female partner, and general physical advantages that men hold over women result in the unlikelihood that a woman would be able to achieve the same kind of dominance over her male partner that would be reflective of coercive control (Anderson, 2009; Myhill, 2015).

Tactics and Impact

Perpetrators may make implicit or explicit threats, use physical or sexual violence, destroy the victim's personal property, and isolate them by closely monitoring their behaviours and interactions with other people (Crossman & Hardesty, 2017; Hamberger et al., 2017). Coercive control also frequently extends into the economic domain including denying the victim access to or limiting transportation; denying access to household utilities; controlling food consumption; making the victim request or beg for money; disconnecting phone lines or breaking cellphones; preventing attendance at work or school; or sending inappropriate images or messages to employers to encourage their dismissal (Sharp-Jeffs, 2017, para.4). Men who use such tactics often discover they do not need to resort to physical violence to control their partner, as the threat of possible violence is enough to maintain compliance (Dawson et al., 2019).

It is commonly recognized that the most dangerous time for a woman experiencing intimate partner violence is at the time of separation. Arnold (2009) noted that "[...] even if abusers who use coercive control tactics have not seriously injured their victims, they can be as explosively violent when their control is challenged as are those men who use physical assaults alone" (1438). Technological advancements have also unfortunately allowed an abuser to try and maintain their power and control post-separation using surveillance measures such as social media harassment; tracking GPS data; sending persistent or threatening text messages; impersonating the victim; or distributing private information or sexual content about the victim online (Dragiewicz et al., 2018).

Such tactics have the potential to impact all aspects of a victim's life, including but not limited to their daily activities; personal appearance and health; relationships with family and friends; opportunities and attendance at work or school; access to economic resources; and legal domains including immigration and child custody (Dutton & Goodman, 2005; Hamberger et al., 2017). Even post-separation, victims are unable to feel safe in locations they otherwise would, such as at school, work, church, or with family members (Stark, 2007). Currently, most of these non-physical tactics by themselves are not recognized by the Canadian Criminal Justice System as illegal, yet the presence of ongoing surveillance and the use of various strategies that include humiliation, dominance, isolation and exploitation result in coercive control being comparable to other capture crimes, such as kidnapping (Stark, 2007).

Canadian Criminal Justice System's Response to Intimate Partner Violence

The Canadian government does recognize that coercive control is part of the dynamic of abuse in intimate partner relationships (Department of Justice, 2015). However, with no incorporation of coercive control within the *Criminal Code of Canada*, cases involving these tactics of abuse are deprived of an effective judicial system response.

Despite a number of offences (Department of Justice, 2019) related to physical, psychological and emotional abuse such as common assault (s. 266), criminal harassment (s. 264), uttering threats (2. 264.1), making indecent and harassing phone calls (s. 372), trespassing at night (s. 177) or mischief (s. 430), there is no offence capturing coercive control in its totality. Current criminal code offences used to prosecute intimate partner violence offenders are also the same offences used in the prosecution of stranger violence, denying recognition that the context in which the offences are committed are often vastly different.

The Canadian Criminal Justice System continues to treat intimate partner violence as an episodic or one-time event, primarily emphasizing the evidence (or lack) of physical violence. Consequently, there is a neglect to question the context of the abuse and the harm caused within these dynamics, resulting in coercive control being unaddressed or dismissed. The lack of corresponding offences to the dynamic of intimate partner violence, including repeat behaviour to

control a partner, makes it difficult for law enforcement to intervene adequately on scene. Police officers are the first responders from law enforcement to make a determination if an intimate partner violence situation is criminal as per the available offences within the *Criminal Code of Canada*. Without a clear recognition of coercive control as criminal behaviour, it is impossible to uncover the destructive behaviours that encompass this abuse or have it addressed within the criminal justice system.

Coercive Control Legislation

Coercive controlling behaviour as a criminal offence is very recent. In fact, few countries in the world have developed and adopted new offences regarding coercive control. The Australian state of Tasmania enacted the Family Violence Act 2004 which came into effect on March 30, 2005 and includes offences pertaining to economic and emotional abuse (Family Violence Act 2004). In 2010, France adopted Law 2010-769 which includes the criminalization of “psychological violence” under which a person is prevented from harassing their spouse or partner with repeated acts that reduce the quality of their life and change their physical or mental health (Atwill, 2010). Recently updated in July 2020, penalties are increased if the actions caused the victim to attempt or complete suicide, and new Penal Code provisions in France also now prevent individuals from using geolocation devices to track their spouse or partner’s movements without their consent (Boring, 2020).

Such laws remain piecemeal approaches and do not encapsulate all elements of coercive control that may be used by perpetrators. However, coercive control has emerged as a criminal offence in the United Kingdom and Ireland. In England and Wales, in 2015, the first offence of coercive control was adopted and implemented under Section 76 of the *Serious Crime Act 2015*, applicable to both current intimate partner and familial relationships and defined as follows:

Controlling or coercive behaviour in an intimate or family relationship

A person (A) commits an offence if—

- (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
- (b) at the time of the behaviour, A and B are personally connected,
- (c) the behaviour has a serious effect on B, and

(d) A knows or ought to know that the behaviour will have a serious effect on B.

(2) A and B are “personally connected” if—

(a) A is in an intimate personal relationship with B, or

(b) A and B live together and—

(i) they are members of the same family, or

(ii) they have previously been in an intimate personal relationship with each other

The one limitation with this coercive control offence is that the only circumstance in which abuse against a former intimate partner is considered is if the parties still reside in the same household as highlighted in (2)(b)(ii). However, controlling behaviours are frequently evidenced after a separation or a divorce.

To facilitate the recognition of coercive controlling behaviour, The Home Office Statutory Guidance Framework have identified a list of seventeen behaviours that could be included in determining whether coercive controlling actions have occurred, such as: isolating a person from their friends and family; depriving them of their basic needs; monitoring their time; monitoring a person via online communication tools or using spyware; taking control over aspects of their everyday life such as where they can go, who they can see, what to wear, and when they can sleep; depriving them of access to support services such as specialist support or medical services; repeatedly putting them down such as telling them they are worthless; enforcing rules and activity which humiliate, degrade or dehumanise the victim; forcing the victim to take part in criminal activity such as shoplifting, neglect or abuse of children to encourage self-blame and prevent disclosure to authorities; financial abuse including control of finances, such as only allowing a person a punitive allowance; threats to hurt or kill; threats to a child; threats to reveal or publish private information (e.g. threatening to “out” someone); assault; criminal damage (such as destruction of household goods); rape; preventing a person from having access to transport or from working (Home Office, 2015:3).

Scotland has taken an alternative approach towards the criminalization of coercive control. Instead of an offence of coercive control per se, Scotland implemented a new offence of “domestic abuse”

which came into effect on April 1, 2019. It is a broad offence encompassing all forms of abusive behaviour towards a partner or ex-partner, including emotional and psychological abuse. Under the *Domestic Abuse Act 2018* the term “abusive behaviour” has been privileged to “coercive control”. What constitutes abusive behaviour refers to:

- threatening or intimidating,
- making partner or ex-partner dependent on, or subordinate to,
- isolating partner or ex-partner from friends, relatives or other sources of support,
- controlling, regulating or monitoring partner or ex-partner’s day-to-day activities,
- depriving partner or ex-partner of, or restricting partner or ex-partner’s, freedom of action,
- frightening, humiliating, degrading or punishing partner or ex-partner.

(Domestic Abuse (Scotland) Act, 2018 asp 5: 2)

The developers of the Scottish legislation consider it to be rather distinctive in that it concentrates on the evidence of perpetrated abuse rather than evidence of injury to the victim, the overall context as opposed to a single incident, it is based in human rights, and utilizes wording and experiences provided directly by women and children who have been impacted by these behaviours (Scott, 2020). Unlike the novel law in England and Wales, the Scottish legislation applies solely to current or ex-intimate partners due to acknowledgment that abuse continues post-separation, and that dynamics of intimate partner violence differ from violence and abuse perpetrated by family members (Scott, 2020). Service providers, advocates and researchers currently consider the Scottish approach to be the “gold standard”.

Policing Coercive Control

Police officers have a responsibility for assessing and managing the risks that are posed by intimate partner violence perpetrators, yet their perceptions of what constitutes violence may be strongly influenced by legislative definitions and the content available within risk assessment tools (Gill, Campbell & Ballucci, 2019). In the context that evidence of an incident of violence between intimate partners is the main focus of prosecutors, police officers look for physical evidence to charge the primary aggressor. Discerning coercive control as a pattern of behaviour that is ongoing

and may not present signs of physical abuse results in an unlikelihood that this behaviour will be recognized by police officers.

For many police officers, administering a risk assessment is an expected component when responding to intimate partner violence calls. However, assessments are often performed only when there is evidence of physical violence, a factor potentially influenced by the content of the tool itself. Within North America, the most frequently used risk assessment tools of the Spousal Assault Risk Assessment (SARA) and the Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER) assess violence as an “actual, attempted or threatened physical harm” (Kropp, Hart & Belfrage, 2005: 1), and the Danger Assessment (DA) and Ontario Domestic Assault Risk Assessment (ODARA) look at the severity and frequency of violence using criteria such as slapping, kicking, punching, choking, grabbing, and pushing (Campbell, Webster & Glass, 2009; Mental Health Centre Penetanguishene, 2005).

Within the United Kingdom, police officers in England and Wales are trained to conduct the Domestic Abuse, Stalking and Honour Based Violence Risk Identification, Assessment and Management (DASH), an assessment tool useful for police officers to identify coercive control as well as current and future risk to victims (Medina Ariza et al., 2016; Myhill & Hohl, 2019; Robinson et al., 2016). Regarding coercive control specifically, the DASH assessment incorporates seven factors including isolation from family and friends, controlling everything the victim does, displaying excessive jealousy, threats to kill the victim, threats to kill children, constant texting or stalking, sexual abuse or humiliation, and threats by the perpetrator to commit suicide (Myhill & Hohl, 2019). As police officers inquire about each risk factor, they are also encouraged to include any relevant remarks in a blank text box below each question, allowing for consideration of additional contextual factors (Robinson et al., 2016).

What is perceived to be life-threatening by a victim may be perceived as minor in the eyes of a responding police officer if they do not recognize the severity of non-physical tactics of abuse and the context in which they occur (Bishop & Bettinson, 2018). Focusing solely on individual incidents allows for the disregard of escalating patterns of violence, the dynamics of abuse, and further understanding about barriers that prevent victims from leaving (DeJong et al., 2008). A

lack of comprehension of coercive control as a form of violence in intimate relationships during an initial response by police officers may set the stage for the availability (or not) of subsequent support responses.

Approaching intimate partner violence as coercive control requires a paradigm shift for law enforcement (Hanna, 2009). It requires reframing police intervention and response to the issue taking into consideration the dynamic of violence that takes place beyond the incident they are responding to. As Stark (2012) indicates, “putting the abusive incident in its historical context changes how police respond to victims” (214). It is the case in England and Wales as the implementation of the coercive control offence that led to reframe the “[...] officer’s typical approach from responding and taking stock of crime ‘incidents’ as isolated events towards looking to a series of interrelated events and the harm that follows from these” (Barlow et al., 2019:4)

Recommendations

1. Creation of new offence of coercive control

Change the *Criminal Code of Canada* to address coercive control as a criminal offence. Two possible avenues are already in place in the world: a) creating a coercive control offence, or b) creating a domestic violence offence.

2. Amend Bill C-247 s. 3 to include all former spouses, common law, or dating partners regardless of living arrangements.

The current wording only considers former partners if residing in the same household. This does not capture the majority of victims who continue to experience coercive control post-separation. While intimate partner violence may begin in the home, it is not exclusive to the residence and is shown to persist over time and space.

3. Legal test to coercive control

Given that coercive control does not exist in the *Criminal Code of Canada*, we recommend the use of the description of coercive control adopted by the Home Office in the United Kingdom as a starting point for a legal test. The statutory guidance framework (2015) offers a rationale for the offence as well as a broad description of what encompasses coercive controlling behaviours.

4. Police agencies

To efficiently address coercive control from the justice system, first responders from law enforcement have an important role in identifying the issue. To date there are no mechanisms in place to flag coercive controlling behaviours for police officers in Canada. Risk assessments currently in use are not covering coercive control. The creation of a coercive control offence needs to be developed in conjunction with the development of a risk assessment and training for frontline police officers who have the responsibility to make the determination of intimate partner violence when entering in the criminal justice system. As it stands now risk assessment tools are not always used when there is absence of physical violence; therefore, the creation of coercive control as an offence in the *Criminal Code of Canada* would mean the assessment of all intimate partner violence calls even when there is no evidence or suspicion of physical violence.

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