



Government of Canada
Office of the Federal Ombudsman
for Victims of Crime

Gouvernement du Canada
Bureau de l'ombudsman fédéral
des victimes d'actes criminels

Submission to the House of Commons Standing Committee on Justice and Human Rights on the Study of Controlling or Coercive Conduct within Intimate Relationships

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Context

As Federal Ombudsman for Victims of Crime, my mandate is to help ensure that the federal government meets its obligations to victims. In addition to assisting individual victims, I also have a responsibility to identify and bring forward emerging and systemic issues that negatively affect victims of crime at the federal level.

One such systemic issue is that of coercive control in the context of intimate partner violence (IPV).

IPV is a complex psychosocial issue that encompasses physical violence, sexual violence, emotional abuse and controlling behaviours as part of the dynamic of abuse. IPV is multidimensional in nature, and encompasses numerous forms of violence, including subtle forms of violence such as coercion and threats, economic or emotional abuse, intimidation, or isolation. Coercive control refers to behaviours that manipulate, intimidate and instill fear in an intimate partner.¹ Experts have identified coercive and controlling behaviours as important precursors for femicide worldwide. IPV occurs not only in marriages and between spouses, but also in dating relationships, and when people are cohabitating. In fact, young persons are at increased risk. According to Statistics Canada's 2018 data on police-reported intimate violence in Canada, violence against dating partners is more prevalent than spousal violence, (17% of all victims as compared to 13%).²

In April 2020, my Office commissioned a research paper, *Understanding Coercive Control in the context of intimate partner violence in Canada: How to address the issue through the criminal justice system?*³ By Dr. Carmen Gill, and Ph.D. candidate Mary Aspinall. My Office also commissioned a second research paper in August 2020, *Male Survivors of Intimate Partner Violence in Canada*, led by Dr. Benjamin Roebuck.⁴

Further to this, I wrote a letter to the Honourable David Lametti, Minister of Justice, recommending that the government update the *Criminal Code of Canada* to include coercive control as a criminal offence. I noted that this new offence would expand the understanding of the issue beyond that of the incident-based approach and provide recognition of a pattern of psychological violence that causes fear and harm to victims in intimate relationships.

I am pleased to provide a submission on this matter.

Bill C-247 proposes amendments to the *Criminal Code* to create an offence of engaging in controlling or coercive conduct that has a significant impact on the person towards whom the conduct is directed, including a fear of violence, a decline in their physical or mental health and a substantial adverse effect on their day-to-day activities.

¹ Gill, D. and Aspinall, M.: "Understanding coercive control in the context of intimate partner violence in Canada: How to address the issue through the criminal justice system?" 2020. <https://www.victimfirst.gc.ca/res/cor/UCC-CCC/index.html>

² Statistics Canada: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2013001/article/11805/11805-3-eng.htm#n5>

³ Gill, D. and Aspinall, M.: "Understanding coercive control in the context of intimate partner violence in Canada: How to address the issue through the criminal justice system?" 2020. <https://www.victimfirst.gc.ca/res/cor/UCC-CCC/index.html>

⁴ Roebuck, B, McGlinchey, D, Hastie, K, Taylor, M, Roebuck, M, Bhele, S, Hudson, E, Xavier, R. "Male Survivors of Intimate Partner Violence in Canada," 2020. <https://www.victimfirst.gc.ca/res/cor/IPV-IPV/index.html>

According to Statistics Canada police-reported crime statistics for 2018:⁵

- Almost a third of all police-reported violence happens between intimate partners;
- There were over 99,000 victims of IPV aged 15 to 89; and
- Seventy-nine percent of victims are women.

This is a pan-Canadian issue, as this type of violence knows no boundaries. It is also, largely, a gender-based issue affecting women, the effects of which are exacerbated by social inequalities, however it is also important to note the coercive and controlling behaviours can and do occur in same-sex relationships as well. As noted in the report *Male Survivors of Intimate Partner Violence in Canada*, 1 in 5 cases of IPV reported to the police in Canada involves a male victim. In 2018, that included 20,600 men. Worth noting is that men are less likely to report their victimization to the police, and when they do, some risk being treated as a perpetrator.⁶

The World Health Organization (WHO) identifies IPV as a major global public health concern, as it affects millions of people and can result in immediate and long-lasting health, social and economic consequences.⁷ IPV affects people of all genders, ages, socioeconomic, racial, educational, ethnic, religious and cultural backgrounds. However, women account for the vast majority of people who experience this form of gender-based violence and men most often perpetrate it.⁸

As such, this document will use gendered language, which is supported by statistics and research. I would also like to note here, that when we refer to IPV, we recognize that this is an issue experienced not only within heterosexual relationships, and we must consider the impact of coercive control on individuals who identify as Two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex, and asexual (2SLGBTQQA).

Recently, in the context of the COVID-19 pandemic, IPV has escalated to the point of being referred to as a shadow pandemic, exacerbated by social isolation and lockdowns aimed at controlling the spread of the virus. At the same time, fewer victims are reaching out for help than before. Given that surveillance is a tactic used in this type of abuse, victims are more isolated from social supports than ever, while their abusers are spending more time in close proximity to them and may be withholding technology that would be used to contact essential services or supports. We must prosecute abusers and hold them accountable for the violence committed in private, even during a pandemic.

Unfortunately, when victims of IPV do report their abuse, the criminal justice system (CJS) may not respond appropriately to their needs, as the pattern of behaviours involved in coercive control including emotional, financial, and psychological abuse, are not currently recognized under the *Criminal Code*, and law enforcement is limited in how they can respond.

⁵ Statistics Canada: <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2019001/article/00018-eng.pdf?st=tZ6gPDmJ>

⁶ Roebuck, B. et al: "Male Survivors of Intimate Partner Violence in Canada," 2020. <https://www.victimfirst.gc.ca/res/cor/IPV-IPV/index.html>

⁷ World Health Organization (2012) <https://www.who.int/publications/i/item/9789241564625>

⁸ Burczykca, Marta. (2019). Canadian Centre for Justice Statistics. Statistics Canada. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00018/02-eng.htm>

Most disturbing are the accounts of coercive controlling behaviours, which are not addressed by police or courts, because no actual physical violence has yet occurred, ending in homicide.

What my Office has heard from victims and survivors of crime

In March 2020, my Office held a community forum in Yellowknife to increase our engagement with victims of crime in the North. We heard from victim services providers, criminal justice personnel, survivors and advocates about their lived experiences with crime and Canada's CJS. There was general agreement among participants that the CJS has not evolved to recognize the realities of IPV and coercive control. One participant pointed out:

*“Assault is what happens when you get into a brawl at a bar.
Intimate partner violence is about psychological or financial abuse.
These need to be recognized as forms of violence.”*

Many survivors who contact my Office from coast to coast to coast echo this sentiment.

Another participant added that education could be important and life saving for many who are unassuming victims of coercive control. That is, many victims may not recognize what is happening to them at home, or in their relationships, as abuse. We heard that many instances of violence are between people who know each other. The abuser as the main provider for the family is another nuance: sending the abuser to jail means sending the provider away. This knowledge creates a dilemma for victims to either suffer in silence, or report the abuser whom they may love and affect everyone who depends on them. There is often pressure by the abuser's family to stay quiet as well.

In addition, victims and survivors have shared with my Office that they often do not feel safe contacting the police as they fear retaliation from the abuser for even attempting to contact law enforcement. Further, some victims have shared that when they have contacted police or other services, they were disbelieved or turned away. Many were told there was nothing that could be done in their situation because what they have experienced is not perceived as violence/abuse or defined as such in criminal law. Victims have also reported that they fear going to court and testifying against their abuser would put them at further risk. Some victims have shared that abusers in a position of power and a valued member of the community, (e.g. a law enforcement officer or member of the military) cause victims to fear that officials will not believe them. The abuse escalates in retaliation.

If the victim manages to leave the abuser, they often continue to live in fear long after, made worse by the fact that they are unable to prove to the police that they are still in danger.

Finally, given that, victim compensation programs are administered by each individual province/territory in Canada, and coercive control is not seen as a crime under the *Criminal Code*, many survivors are denied victim compensation or financial assistance. Also complicating matters, applications for victim compensation in all provinces with programs require that a crime be reported to police (except for British Columbia and Quebec who require cooperation with police).

Position

As Ombudsman, I seek fairness for victims and survivors of crime. I believe that victims and survivors deserve more responsive legal and justice systems. Victims and survivors, as well as those working on the front lines to support them, tell my Office that the current criminal law

response to IPV is inadequate. The behaviours that largely encompass their experiences of IPV (repetitive or chronic patterns of psychological, financial and emotional abuse) are not viewed or defined as criminal behaviours, and thus the police cannot effectively intervene.

I firmly believe that Canada should address this problem in the legal context because IPV, generally, is a largely hidden and underreported crime, with only about one third of victims coming forward to police.⁹ Criminalizing coercive and controlling behaviours sends a clear message that this form of abuse constitutes a serious offence—particularly in light of the violation of trust it represents—and would provide better legal protection to victims experiencing this chronic and repeated abuse.

By making amendments to the *Criminal Code*, we can also address current limitations faced by all law enforcement agencies in recognizing and responding to the issue of coercive controlling behaviours in IPV situations. Defining this behaviour as criminal will provide law enforcement officers with the ability to identify and address psychological, financial and emotional violence before it progresses to physical violence. It would also help to ensure that survivors of these crimes are able to access victim compensation in their province or territory.

Such an approach will require providing police, Crown prosecutors and judges with the tools, including ongoing education and training, and policy manuals, to help them improve their response to this pervasive form of violence.

Recommendations

1. Create a task force of experts to lay groundwork of necessary amendments to the *Criminal Code*

I recommend the creation of a task force or committee comprised of criminal justice representatives from all levels (police officers, prosecutors, defence lawyers) including experts on coercive controlling behaviours and IPV, and representatives of victim services, to lay the groundwork of the amendments needed before the proposed legislation is brought into effect.

I recommend that the Committee studying this Bill uses the GBA+ analysis, and consults with a wide variety of experts, including hearing the lived experiences of victims and survivors, Indigenous communities, Black people, people of colour (POC), disabled individuals, and members of the 2SLGBTQQIA community to ensure diverse voices are considered in the discussion around this proposed legislation.

2. Legal test to coercive control

I recommend using 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 offers a rationale for the offence as well as a broad description of what encompasses coercive controlling behaviour. Of course, any definition developed should reflect a Canadian way of defining the issue.

⁹ Status of Women Canada: <https://cfc-swc.gc.ca/violence/knowledge-connaissance/ipv-vpi-en.html>

3. Federal/Provincial/Territorial working group to review legislation, policies pertaining to IPV and ensure they are consistent, to the extent possible, across Canada.

I recommend the creation of a Federal/Provincial/Territorial working group to support collaboration from Ministers responsible for justice and public safety at all government levels. The creation of a new offence related to IPV will have policing and justice implications in all jurisdictions coast to coast to coast. Application of the *Criminal Code of Canada* should be consistent and the response to IPV must reflect upon a pattern of violence, beyond the single-incident offence.

4. Ensure pre and post-implementation training for police, Crown prosecutors, judges and other CJS personnel to ensure understanding of coercive control and consistent trauma-informed, victim-centered responses

In order to ensure the successful implementation of any new legislation, I recommend proper training within the justice system prior to implementation. Ongoing training and education is also necessary for police, Crown prosecutors, judges, criminal justice officials post-implementation to ensure understanding coercive, controlling behaviours, and a shift away from incident-based approach to understanding IPV. It is imperative for law enforcement, Crown prosecutors, and every other part of the CJS to have a shared understanding of how repetitive emotional, psychological and financial abuse can be criminal. Women hesitate to come forward as officials minimize their experiences or disbelieve them. We can change how we respond to IPV in Canada, by clearly defining coercive control in the context of IPV to ensure a trauma-informed and victim-centred approach. We can give survivors the confidence to seek support, save lives and hold abusers accountable.

5. Monitoring the implementation and application of the proposed law

It is imperative to collect data, report, and monitor the implementation and application of any coercive control legislation, if enacted. Data from other countries that have implemented this type of legislation has shown gaps, unintended negative consequences and has highlighted where further amendments need to be made to ensure the law is effective.¹⁰ We must ensure that victims who try to report coercive control do not suffer further harm or negative consequences such as being charged themselves, as we have seen with mandatory charging policies in response to domestic violence.

6. Initiate awareness campaign

If enacted, develop a national public awareness campaign to raise awareness of the Shadow Pandemic, IPV and coercive control, as well as the obligations of all CJS officials in responding. The campaign should also share, promote and connect Canadians to services and supports available to victims and survivors of this type of abuse.

7. Provide sustained funding to community-based services

¹⁰ Walkate, S. and Fitz-Gibbon, K.: "Why Criminalize Coercive Control? The Complicity of the Criminal Law in Punishing Women Through Furthering the Power of the State," 2021.
<https://www.crimejusticejournal.com/article/view/1829/1024>

Services that support survivors in the aftermath of violence need stable, predictable funding sources instead of project funding through grants and contributions, which is haphazard and inconsistent. I recommend the federal government provide sustained funding to community-based services responding to violence against women and intimate partner violence, as we know that their work is vital to the success of legal responses to the social harm of violence against women.

Considerations

Following are a few points that I would like to see given due consideration in order to enhance the impact of the proposed legislation, and to help ensure that victims will have the support they need.

Canada's Gender Based Violence Strategy requires a robust legal framework

The Department of Women and Gender Equality has developed The Gender-Based Violence Strategy,¹¹ which provides funding to support educational and social programs aimed at eradicating such violence and supporting victims. However, without a robust legal framework to underpin the strategy, there is a real risk that it will not achieve its aims.

International recognition of dangers of coercive control

It may be useful to consider what is being done in the international context in countries that are like-minded to Canada. For example, coercive control has been illegal in England and Wales since 2015. Scotland enacted domestic abuse laws in 2019 that focus on coercive control and include funding for training for police and the judiciary. In addition, in September 2020, California passed a law that allows coercive control behaviours to be introduced as evidence of domestic violence in family court. That same month, Hawaii became the first state to enact anti-coercive control legislation. New York and Connecticut legislatures have since introduced similar laws.¹²

Transforming the CJS's approach to victims

From a victim's point of view, the CJS generally has a poor attitude towards victims, despite the passing of legislation in 2015 recognizing victims' rights—the *Canadian Victims Bill of Rights* (CVBR). Victims frequently report victim blaming by criminal justice personnel; indicating a limited understanding both of the dynamics of crime and of the responsibilities they have towards victims who are, after all, citizens.

Additionally, criminal justice personnel are not systematically informing victims about their rights under the CVBR and ensuring that these rights are respected.

If new legislation criminalizing coercive control is passed, corresponding changes to criminal justice personnel training curricula will need to be incorporated so that they know how to recognize and respond appropriately.

¹¹ Department of Women and Gender Equality: <https://cfc-swc.gc.ca/violence/strategy-strategie/index-en.html>

¹² Ryzik, M and Benner, K., "What Defines Domestic Abuse? Survivors Say it's More than Assault," (2021) <https://www.nytimes.com/2021/01/22/us/cori-bush-fka-twigs-coercive-control.html>

Public health approach needed

IPV, particularly coercive control, is a complex psychosocial issue that requires a public health approach; combining legislation, education and social and health supports to prevent this violence upstream, before it occurs. As the provinces and territories oversee these elements, it is essential to develop a federal/provincial/territorial approach so that all citizens have access to equivalent services and protection under the law.

An important piece of that approach will be a national public information campaign to raise awareness, particularly amongst young persons, about healthy relationships and acceptable behaviours.

Careful wording needed

It will be necessary to define/describe behaviours constituting coercive control. 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*. Coercive control under this law applies to both intimate partner and family relationships. The Home Office Statutory Guidance Framework have identified a list of seventeen behaviours that could be included in coercive controlling behaviours 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 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;
- preventing a person from having access to transport or from working;
- depriving them of access to support services, such as specialist support or medical services;
- putting them down repeatedly such as telling them they are worthless;
- enforcing rules and activities 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;
- controlling finances, such as only allowing a person a small allowance;
- threatening to hurt or kill;
- threatening a child;
- threatening to reveal or publish private information (e.g. threatening to 'out' someone);
- destroying household goods or other criminal damage;

- assaulting; and
- sexually assaulting.

Conclusion

The Canadian legal and justice systems must be more responsive to the lived realities of victims and survivors of IPV. These realities often involve fewer overt acts of physical aggression and violence, and more repeated patterns of intimate terrorism in the form of psychological abuses and coercive control. This violence, which occurs in private, must be recognized as violence, so that an adequate criminal justice response is possible.

Victims and survivors deserve access to justice, which is often not possible due to our limited legislative framework. By making necessary *Criminal Code* amendments, we can improve women and children's safety. We can also address current police limitations in recognizing these coercive controlling behaviours when responding to situations of IPV. In my view and experience working directly with victims and survivors, it is time to address this gap in legislation.

ABOUT THE OFFICE OF THE FEDERAL OMBUDSMAN FOR VICTIMS OF CRIME

The Office of the Federal Ombudsman for Victims of Crime helps victims to address their needs, promotes their interests and makes recommendations to the federal government on issues that affect victims. For more information visit: www.victimfirst.gc.ca