

Submission by the  
Canadian Labour Congress  
to the  
House of Commons Standing Committee on Justice and Human Rights  
regarding

# **Controlling or Coercive Conduct within Intimate Relationships**

February 26, 2021



## Executive Summary

Over a third of workers in Canada have experienced domestic violence.<sup>1</sup> Of these workers, many experience coercive control—a pattern of behaviours whereby one partner exerts power and control over the other through monitoring, intimidation, threats, humiliation, isolation, surveillance and other manipulative tactics. Being in a coercive and controlling relationship is usually extremely psychologically harmful for the target, regardless of whether they are exposed to physical violence. However, coercive control is also highly correlated to serious injury and death. The majority of women killed by an intimate partner or ex-partner are in coercive and controlling relationships.<sup>2</sup>

The Canadian Labour Congress (CLC) recommends improving efforts to prevent and address coercive control. These include:

- Increasing funding for women’s shelters and other support services;
- Investing in programs for people using abusive behaviour;
- Broadening eligibility for tenants to end their leases early as a result of abuse (i.e. extending lease breaking rights to people in abusive relationships where no physical violence is present);
- Ratifying International Labour Organization (ILO) Convention C-190;
- Introducing a National Action Plan on Gender-Based Violence; and
- Including coercive control in domestic violence education and training for police, judges, workers, employers, youth, violence and harassment regulators and inspectors, and service providers.

While legislation that recognizes coercive and controlling behaviour as a criminal offence might improve safety for some workers exposed to domestic violence, we ask the Committee to also consider the serious cautions that have been raised with this approach. Some of these cautions are: the challenge of law enforcement and others outside the relationship to establish whether coercive control is occurring; the potential adverse impacts on Black, Indigenous and other marginalized communities; the detriments of prioritizing criminal instruments over potentially more effective social and community-based supports; and the possibility that criminal charges relating to coercive

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<sup>1</sup> Wathen, C. N., MacGregor, J. C. D., MacQuarrie, B. J. with the Canadian Labour Congress. (2014). *Can Work be Safe, When Home Isn't? Initial Findings of a Pan-Canadian Survey on Domestic Violence and the Workplace*. London, ON: Centre for Research & Education on Violence Against Women and Children. [https://canadianlabour.ca/wp-content/uploads/2019/04/dvwork\\_survey\\_report\\_2014\\_enr.pdf](https://canadianlabour.ca/wp-content/uploads/2019/04/dvwork_survey_report_2014_enr.pdf)

<sup>2</sup> Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., et al. (2003). *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case. Control Study Femicide Cases*. American Journal of Public Health Public Health (Vol. 93).

control might already be covered by existing criminal offences (e.g., criminal harassment (s. 264), uttering threats (s. 264.1)).

If creating a criminal offence for coercively controlling behaviours is pursued, the CLC recommends incorporating the offence into comprehensive domestic violence legislation that allows criminal and controlling behaviours to be considered in conjunction with other charges related to domestic violence. This legislation should be introduced alongside other efforts to address domestic violence described above.

## **The Need to Address Coercive Control**

The impacts of coercive and controlling relationships on survivors, their families and co-workers are frequently severe and dangerous.

The CLC would like to raise two important additional considerations on the need to address coercive control:

1. For workers in Canada addressing coercive control is especially important because of the threats it poses to workplace safety.
2. Considering domestic violence only as individual instances of physical violence is inaccurate and often unhelpful to survivors. The recent changes to the *Canada Labour Code* Part II as well as the new ILO Convention C-190 recognize harassment and violence as a continuum. These instruments might help inform a broader approach to domestic violence.

## **A Workplace Safety Issue**

Domestic violence impacts the workplace. In a 2014 CLC survey,<sup>3</sup> of respondents who had experienced domestic violence:

- 82% said that domestic violence negatively affected their work performance (through distraction, tiredness, lateness, interruptions at work from the abuser, poor concentration and absenteeism);
- 53% said they experienced violence at or near the workplace;
- 38% reported that domestic violence affected their ability to get to work;

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<sup>3</sup> Wathen, C. N., MacGregor, J. C. D., MacQuarrie, B. J. with the Canadian Labour Congress. (2014). *Can Work be Safe, When Home Isn't? Initial Findings of a Pan-Canadian Survey on Domestic Violence and the Workplace*. London, ON: Centre for Research & Education on Violence Against Women and Children. [https://canadianlabour.ca/wp-content/uploads/2019/04/dvwork\\_survey\\_report\\_2014\\_enr.pdf](https://canadianlabour.ca/wp-content/uploads/2019/04/dvwork_survey_report_2014_enr.pdf)

- 37% said that it negatively impacted their co-workers; and
- 8.5% had lost a job as a result of domestic violence.

Moreover, in situations where violence continues (or even escalates) after a relationship has ended, as is often the case, the workplace is frequently the place where a perpetrator is able to find a victim. Therefore, in some extreme cases, a worker and/or their co-worker has been killed by an ex-partner while at work.

Coercive control is highly correlated with domestic homicide, even when physical violence is not especially common or severe in the relationship. For example, a review of domestic homicides in the Australian state of New South Wales found that every case of domestic homicide in 2015 involved male partners exerting coercive and controlling behaviors over female victims prior to the homicide.<sup>4</sup> Similar analyses do not appear to be available for any Canadian jurisdiction, but many of the provincial Death Review Committee reports do identify risk factors for domestic homicide that are characteristic of coercive control (e.g., “obsessive behaviour on the part of the perpetrator”).

Even when the abuse does not end in homicide, many of the negative impacts of domestic violence for workers are related to coercive control. For instance, a worker experiencing domestic violence might be late or absent from work because their partner has taken their car keys or locked them in their home—both common control tactics. They might be tired as a result of forced sleep deprivation or mandated chores and so on.

Co-workers and employers frequently observe these and other signs of coercive control, even when they do not recognize it as such. For example, they might witness the partner or ex-partner stalking the worker at the workplace, monitoring their schedule, and/or calling, texting or emailing excessively during the workday. Co-workers and employers are less likely to witness physical violence.

It should be noted, however, that perpetrators often exert their control in ways that might be unintelligible to anyone outside the relationship. We discuss this below in the Cautions section.

Regardless, given that there is clearly a need to do more to interrupt coercive and controlling behaviours in some way in order to better protect workers, we recommend that in the very least more education be provided for workers and employers on coercive control. (Ontario’s Domestic Violence Death Review Committee similarly recommended in 2018 that education on coercive control be made available to

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<sup>4</sup> Johnson H, Eriksson L, Mazerolle P, Wortley R. *Intimate Femicide: The Role of Coercive Control*. *Feminist Criminology*. 2019;14(1):3-23. doi:10.1177/1557085117701574

Children’s Aid Society staff, Indigenous communities, and the public at large.<sup>5</sup>) For federally regulated workplaces, workplace violence and harassment inspectors and regulators should also be trained in coercive control.

## **The Continuum of Violence**

Currently, the criminal response to domestic violence in Canada is designed to respond to single incidences of violence. Criminal offences related to domestic violence are therefore usually considered in isolation rather than as part of a larger pattern of abuse. Moreover, the most commonly prosecuted offences related to domestic violence (e.g., assault (ss. 265-268)) are primarily those that apply to physical violence. As a result, the existing criminal approach to domestic violence fails to recognize the overarching abusive patterns of behaviour that characterize violent relationships. It does not consider the broader context of the relationship, which might include incessant and ongoing psychological and financial abuse—as well as the cumulative effect on the survivor. The extent of the trauma that the survivor endures is therefore usually minimized.

A more comprehensive approach would capture the severity of abuse through an understanding of a series of related behaviours. Understanding domestic violence as a continuum of behaviours (including ones that represent coercive control) rather than single acts of physical violence is consistent with the approach that is more commonly being applied to workplace violence and harassment.

That is, federal and international labour standards are increasingly recognizing violence as a continuum of behaviours. In the recent amendments to the *Canada Labour Code* (Part II), for example, the definitions of workplace harassment and violence were amalgamated to describe: “any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment. This includes all types of harassment and violence, including sexual harassment, sexual violence and domestic violence.”

Similarly, the ILO Convention C-190 on violence and harassment in the world of work defines violence and harassment as “a range of unacceptable behaviours and practices” that “aim at, result in, or are likely to result in physical, psychological, sexual or economic harm”. This covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things.

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<sup>5</sup> Office of the Chief Coroner, Province of Ontario (2018). *Domestic Violence Death Review Committee, Annual Report*. <http://cdhpi.ca/sites/cdhpi.ca/files/2017-DVDRC-Report.pdf>

Enshrining an understanding of violence and abuse as part of a continuum in criminal law is likely not only more reflective of the reality of domestic violence but also more consistent with labour and employment standards. It might also more accurately capture the severity of the abuse and offer legal options to those trapped in isolated and controlling relationships but where little, if any, physical violence is present.

For this reason, the CLC recommends that any additional criminal offences related to coercive control be incorporated into overarching domestic violence legislation. This type of legislation would allow the extent of abuse that survivors experience to be fully considered in criminal proceedings rather than just individual instances of physical violence.

## **Cautions for Criminalizing Coercive Control**

While coercive control is harmful, creating additional criminal offences for it might prove problematic. We ask that the Committee consider these challenges:

1. The difficulty of determining coercive control
2. Existing criminal offenses
3. The impact on Black and Indigenous communities
4. The detriments of prioritizing criminal instruments

## **Determining Coercive Control**

As we noted above, coercive and controlling behaviours are often unintelligible to those outside the relationship. In their assessment of the English and Welsh coercive control laws, Charlotte Bishop and Vanessa Bettinson remind us that “the abuser will typically use signals and covert messages to exert and maintain control and often these have meaning only in the context of that particular relationship. For example, the perpetrator may use a specific look, phrase or movement to convey to the victim that they are close to breaking an unspoken ‘rule’. But these signals may be hard to classify as abusive in and of themselves. Compliance with demands about dressing, shopping or cooking in a particular way to avoid repercussions may seem voluntary to an outsider with little or no understanding of the dynamics in the relationship.”<sup>6</sup>

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<sup>6</sup> Bishop C, Bettinson V. *Evidencing domestic violence\*, including behaviour that falls under the new offence of ‘controlling or coercive behaviour.’* The International Journal of Evidence & Proof. 2018;22(1):3-29. doi:10.1177/1365712717725535

This raises a considerable challenge for the criminalization of coercive control and its broader implications for the workplace. Namely, that while coercive control has serious workplace impacts, it is often very difficult to assess. In a criminal context, a great range of behaviours would be evaluated by people outside the relationship (judges, police, possibly employers and others witnesses, etc.), who determine whether something is or is not coercive control. Rarely are coercively controlling dynamics so easily categorized or recognized. As Sandra Walklate and Kate Fitz-Gibbon put it, “problematically, when these distinctions are drawn in the realm of law, it is not the individual experiencing the behaviour who decides whether the actions constitute coercive control or which actions should be considered criminal, but rather the legal actors involved.”<sup>7</sup>

It begs the question if the blunt instrument of the criminal law is appropriate or effective for addressing coercive control.

### **Existing Criminal Offences**

Some existing criminal offences in Canada cover many of the behaviours described in coercive control legislation in other jurisdictions (e.g., England, Wales, Scotland, and some parts of Australia). For example, criminal harassment (s. 264) covers behaviours that involve stalking and monitoring a partner or ex-partner, which are common in coercively controlling relationships. Similarly, the coercive control tactics of threatening a partner or ex-partner with injury, death, or property destruction are covered under uttering threats (s. 264.1).

Frequently, these crimes are not prosecuted or enforced because of a lack of evidence. There is nothing to suggest that the same issue would not arise with distinct coercive control offences. A less redundant and more effective approach might be to improve training and education for judges and police on coercive control, and to incorporate coercive and controlling behaviours into an overarching offence of domestic violence, which we discuss more later.

### **Impact on Black and Indigenous Communities**

Both Black and Indigenous people in Canada are more likely than white people to be charged with a crime. Department of Justice analysis indicates that while both groups

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<sup>7</sup> Walklate S and Fitz-Gibbon K (2019) *The criminalisation of coercive control: The power of law?* International Journal for Crime, Justice and Social Democracy 8(4): 94-108. <https://doi.org/10.5204/ijcjsd.v8i4.1205>

make up approximately 3% of the general population, Black people represent 9% of Canada's prison population<sup>8</sup> and Indigenous people represent 25%.<sup>9</sup>

Taking a criminal justice approach, especially when taken without also increasing alternative community supports, is likely to disproportionately impact communities who are already under-protected and overpoliced. Though there is not yet available demographic data on charging for jurisdictions with coercive control legislation, it is reasonable to assume that in Canada, Indigenous and Black men, in particular, are more likely to be charged with new criminal offences, as they are with existing criminal offences.

Moreover, both Indigenous and Black children are overrepresented in the child welfare system in Canada.<sup>10</sup> Given that women often cite fear of child apprehension as a reason not to report their experiences of domestic violence, adding criminal offences that could be used in child welfare cases is likely to compound this fear.

Approaches that support women to be able to leave relationships (e.g., lease breaking legislation, shelters) and families to address challenges (e.g., addictions and mental health programs) are likely less threatening for groups who already have adversarial relationships with police and criminal justice systems.

### **Detriments of Prioritizing Criminal Instruments**

As indicated throughout our submission, there are a number of initiatives that could help those experiencing coercive and controlling behaviours. The CLC recommends implementing these initiatives regardless of whether a criminal approach is pursued. We ask the Committee not to prioritize criminal approaches over and above social services, training and other supports.

To most effectively address coercive control, the CLC recommends increasing funding for women's shelters and services, especially in rural, remote and other under-served areas. Shelters are frequently full or inaccessible, and women are too often turned away. Making federal capital funds available to increase the number of shelters, as well as supporting provinces and territories to support their operation and increase resources for safety planning and risk assessment could go a long way in preventing serious injury and death. Public education on coercive control might also help people

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<sup>8</sup> Office of the Correctional Investigator (2013). *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*. <https://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20131126-eng.pdf>

<sup>9</sup> Department of Justice (2017). *Indigenous Overrepresentation in the Criminal Justice System*. <https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/jan02.html>

<sup>10</sup> Ontario Human Rights Commission (2018). *Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare*. [http://www.ohrc.on.ca/en/interrupted-childhoods#\\_ftn36](http://www.ohrc.on.ca/en/interrupted-childhoods#_ftn36)



understand that shelters are an available resource to them even if there is little or no physical violence in their relationship.

Similarly, investing in programs for people who use abusive behaviour—and ensuring those programs address coercive control—could help reduce coercively controlling behaviour and should be considered alongside, or as an alternative to, a criminal approach.

Finally, given the impacts of domestic violence at work, ratifying ILO Convention C-190 on violence and harassment in the world of work is critical to effectively address domestic violence, including coercive control. All of these initiatives would also benefit from a National Action Plan on Gender-Based Violence in order to ensure services and supports are available to everyone consistently across jurisdictions.

## **Conclusion**

The harms caused by coercive control, including the impacts on workplace safety, should not be taken lightly. Criminalizing some of these behaviours might increase safety for some people in abusive relationships. However, a criminal approach should not be prioritized over non-criminal interventions that might pose fewer issues in terms of determining charges and fewer threats to Black and Indigenous communities. If a criminal approach is pursued, it should be to allow law enforcement to consider coercive control as part of a pattern of domestic violence and not to add additional stand-alone offences to the Code.

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