

**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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I am submitting this brief based on my personal and professional experience, knowledge, and expertise in the areas of individual and systemic discrimination, international and domestic human rights, intimate partner violence and abuse, coercive control, access to justice, Indigenous knowledges, history, culture, legal systems, and ways of knowing-being-doing, and other relevant fields and knowledges.

It is my hope that this submission will provide information and recommendations that will help to address the individual and systemic impacts and perpetuation of IPV/A and CC. IPV/A and CC are reaching epidemic levels, and the trauma and harm being suffered by victims/survivors, a disproportionate number of which are women and children, has far reaching social and economic impacts that result in lower levels of social, societal and community wellbeing.

I am not going to commence this briefing with an introduction to IPV/A and CC. That has been done in other briefings, and seems unnecessary to the points I wish to make. Instead, I am going to provide a human-based overview of the foundations of a human-based issue, and relevant historical, and often overlooked, facts and information, grounded in my areas of experience and expertise, including Indigenous and experiential knowledges and pedagogy. I hope this perspective-giving approach helps you on your journey towards making your decisions in a good way.

**Overview of Relevant Issues and History:**

IPV/A and CC are human issues perpetuated by individuals, yet enabled at a systemic level. Addressing IPV/A and CC requires a societal approach that examines and addresses the need for changes in how children of all genders are socialized, and the impacts of trauma and abuse on children, women and BIPOC communities, as well as an consideration of actual and desired social standards for individual and community health and wellbeing. To actualize change in relation to IPV/A and CC there is a need for increased funding and applied research in the areas of mental health, gender discrimination, and socialized and societal trauma. However, to truly achieve a harm-reduction impact on this issue, there is only one primary requirement: for individual human beings, with the power and authority to create change, to assess what level of trauma and harm they are willing to allow other human beings to endure, and for them to take action accordingly.

Every single individual is responsible for the moment to moment choices they make that allow for the perpetuation of the current “victim blaming”, women are “lesser than” society in which we all currently exist. The mere fact that such a statement evokes an implicit, subconscious, or conscious denial of what is a well documented academically

proven fact, is one of the reasons why IPV/A and CC has become so pervasive and harmful; and why it impacts so many human beings, particularly women and children.

Western society and culture is grounded in a social contract that necessitates the automatic surrendering of one's rights and freedoms, without active, free or informed consent, upon birth. Those rights and freedoms have historically been given to a small percentage of people, who developed a governance and legal system that exerted, and continues to exert, power and control over women, children, and the vast majority of other human beings. The extent of the resulting trauma and harm, historically and to the present day, like most things, is a spectrum. This does not, however, change the fact that the "systems" in western society work exactly as they were intended to: they protect the wealthy and powerful (historically cis white men of privilege), by using trauma and harm to keep those lesser than (the majority) from having the capacity to seek equity, accountability, and peace of mind (mentally / psychologically, economically, and in terms of overall individual and community health and wellbeing).

Canada takes its legal system from a colonial model of law that is grounded in a social paradigm, and legal tests, that allow for the vast majority of perpetrators of poor-on-poor crime to go free. I learned this important, yet well hidden, lesson in my first year of law school from an incredible, and exceptionally honest and candid, social justice advocate by the name of Prof. Allan Hutchinson. My research and knowledge gathering has since revealed an astonishingly unacknowledged amount of academic research that illustrates how 9 out of 10 rapists go free; 9 out of 10 domestic abusers go unaccountable; and 9 out of 10 perpetrators of "poor on poor" blue collar crime are not held criminally accountable. Why - because that is how the system is intended to function; denying that reality does not change the facts or inherent nature of the truth.

Colonial European legal systems were purposely developed in this manner as a result of the lessons learned by elites, following the French Revolution and European Spring. Following these social uprising, those in power determined it was in their economic, and general wellbeing, to allow for poor-on-poor crime to be perpetuated, rather than face the consequences of putting innocent people in jail. Words have power, and the manipulation of words has the power to create illusions within individuals and populations. Canada, like all western colonial nations, has a legal system, it does not have a justice system; but that does not mean that it absolute could, and it absolutely should.

Statistics about rape and sexual assault provide a solid basis for illustrating both the implicit biases, prejudices and discrimination that are inculcated in individual human beings within western societies, as well as the rates at which the system permits "poor-on-poor" (aka blue collar) crime to continue unabated. Statistics from police services and academics have consistently found that, what is often incorrectly termed as, "false" allegations fall around 2%, with conservative estimates generally topping out at 8%. These statistics on "false" allegations, generally include reports where the rape/sexual assaults were attempted, thought to be truthful, but do not meet the legal definitions of the crime (which are generally extremely difficult to meet because, as previously mentioned, that is how the system is designed to function).

To put these statistics another way: between 92% to 98% of rape and sexual assault reports are **true**. And yet, 63% to 80% -or more- rapes and sexual assaults go

unreported. Why? Because the victims are afraid to report, as they are consistently disbelieved, treated as suspect, or as though they are trying to harm their abusers. At this point in time, it should be reasonable to assume that it is ‘common knowledge’ that \*1 in 3\* females have been sexually assaulted (at least once, if not numerous times). Various studies from Europe also show that between 21%-25% of women have experienced some form of sexual harassment *in the last 12 months*.

I have never met a single human being that did not come into this world as a result of the labour, energy, pain, and sacrifice of a woman and her body. *Have you?*

And yet, those same people are treated as criminals, and further victimized by a culture of victim-blaming, and disbelief, when they report how their bodies have been violated by rape or sexual assault. Even though, statistically, between 92% to 98% of women making these reports are *telling the truth*.

This statistic is similar, if not higher, when it is a child reporting any form of abuse: in fact, upward of 98% of children who report being abused, by a parent or adult, are *telling the truth*. Yet, these children are often re-traumatized, like women, by being forced to go through interview after interview, to report in detail the abuse and harm they have suffered, without the benefit of the doubt, gender-privilege, or ‘innocent until proven guilty’ allowances accorded to their abusers. Instead, the implicit biases and prejudices inculcated into the systems, and individuals, to whom women and children must make their reports of trauma and violence (such as IPV/A and CC), seemingly function on the assumption that they are making “false” allegations. Consequently, victims of rape, sexual assault, and child abuse, like victims of all other forms of IPV/A and CC, are forced to repeatedly prove their victimization, despite the fact that 92% to 98% of them are statistically telling the truth (to a standard that actually meets the perpetrator-privileging, purposely high, requirements of criminal laws). This represents just one of the many examples and reasons why victims of IPV/A and CC remain in abusive situations, and are afraid to try to escape or report their abuse.

### **IPV/A and CC: issues, resources, recommendations**

This section provides an overview of a few other reasons that IPV/A and CC are so pervasive, and why women, the predominant victims/survivors, are afraid to leave or seek help to escape the abuse, as well as some recommendations for consideration.

#### 1) Litigation abuse:

Litigation abuse is a recognized issue that severely affects women who are the victims of IPV/A and CC. Factors for identifying and protecting women and children from litigation abuse are discussed on the Department of Justice’s Website *Best Practices for Representing Clients in Family Violence Cases, Part III: The Trial* (<https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/bpfv-mpvf/viol2c.html>).

A primary enabler of litigation abuse is the need for judicial training, as well as legislative updates. These are essential so that judges can: (i) understand the

pervasiveness of gender-biases and the harm it causes victims/survivors of IPV/A and CC, and (ii) so the judiciary can develop appropriate science-based and trauma-informed skillsets to protect women and children. Needed training and legislative updates, include, but are not limited to:

- Judicial training to differentiate between: “Children who are de facto estranged from one of their parents as a consequence of that parent’s history of family violence, abuse, or neglect” and, those who are actually an “alienated child” under the law. For more information see: Kelly, J. B., & J.R. Johnston. The Alienated Child: A Reformulation of Parental Alienation Syndrome. *Family Court Review*, Vol. 39 No. 3, July 2001 249-266.
- Requirements that all family law judges be mandated to read, without exception, the Benchbook for Judges on domestic violence, authored by Dr. Linda Neilson, which contains sections on: abuse litigation and the misuse of parental alienation as a means of perpetuating IPV/A and CC, particularly as against women, children, and those from other marginalized and BIPOC groups.

The following resources provide emergent knowledge on this issue:

- Neilson, L. C. (2020, 2<sup>nd</sup> ed.) [\*Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases\*](#) (Ottawa: Canadian Legal Information Institute, CanLII). The 2020 1500+ page e-book replaces the earlier 2017 edition.
- Neilson, L.C. (2018) [\*Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?\*](#) Vancouver: The FREDA Centre for Research on Violence Against Women and Children.
- Linda C Neilson with Joan Meier, Elizabeth Sheehy, Margaret Jackson, Ruth Halperin-Kaddari, Susan Boyd, Peter Jaffe, Simon Lapierre, et al. (2019). [\*Collective Memo of Concern to: Work Health Organization\*](#) .London, Ontario: Western University). Note this document has been endorsed by 352 experts, and over 700 individuals, from 26 countries around the world; I highly recommend the primary authors be brought in as experts of IPV/A and CC for any further parliamentary, governmental, or non-governmental inquiries, committees, or investigations.

## 2) Gender-based biases:

Gender discrimination has a significant impact on procedural fairness and access to justice. This includes difficulties in finding lawyers willing to put forward arguments of IPV/A and CC by women, as well as finding child and family services agents, or police service agents that understand the depth and complexity of IPV/A and CC. The dearth of funding and research on gender-based discrimination in the context of women, particularly since 2008/2009, is deeply concerning and extremely obvious from just a cursory review of the Ministry of Justice’s website, or any other given government website.

There is a desperate need for training at all levels of government, and for all service providers, including judicial staff and medical staff, on implicit gender biases and prejudices and how to conduct Gender Based Analysis+ (GBA+). There is also an equivalent need for training in cultural awareness analysis and supports, and trauma-

informed analysis and supports with respect to Indigenous peoples and with respect to other BIPOC human beings.

Parental alienation is a primary example of both gender-based bias and litigation abuse: non-custodial fathers generally employ it, by capitalizing on the vulnerabilities of custodial mothers subjected to a history of IPV/A and CC. These vulnerabilities include, but are not limited to:

- trauma-based affects or responses resulting from the IPV/A and CC, including PTSD;
- gender-based biases and attitudes that are dismissive of women as “jealous and scorned”, “crazy”, “irrational”, “evil”, and “manipulative”, as well as victim-blaming biases against women that claim to be escaping, or who remained in, domestic violence and family violence situations; as well as,
- age based biases and discriminatory attitudes towards children.

### 3) Lack of understanding of the impacts of witnessing IPV/A and CC by parents and children:

As knowledge about the scope of family violence has expanded, so has the understanding that not all violence is the same, and the emotional and psychological violence is equally, if not more harmful, than physical violence. Experts have identified at least four types of intimate partner violence and abuse (IPV/A):

- i. coercive and controlling violence: violence that forms “a pattern of emotionally abusive intimidation, coercion, and control coupled with physical violence against partners.”
- ii. violent resistance: violence in response to coercive and controlling violence. The violence is generally a response to an assault and the objective is to protect oneself or another person.
- iii. situational (or common) couple violence: violence that is not associated with a general desire to control one’s partner, but to a particular incident or situation. It is generally a result of an inability to manage conflict or anger.
- iv. separation-instigated violence: violence that generally occurs around the time of separation with a small number of incidents. It can range from minor to quite severe.

While all violence is of concern, the most serious type of violence, in the family context, is coercive and controlling violence. This is because it is part of an ongoing pattern, involves more danger, and is more likely to be associated with compromised parenting. The primary outcome of coercive control is a condition of entrapment that can be hostage-like in the harms it inflicts on dignity, liberty, autonomy, and personhood, as well as physical and psychological integrity, parenting capacity, and economic and social capacity (Stark, E., 2012, pg. 7).

What is not frequently discussed, or understood, is the impact of witnessing IPV/A and CC by parents and children. Whether the witness is a child seeing IPV/A and CC used against one of their parent’s, or a parent witnessing violence, abuse, and CC used against their child: this is an issue that absolutely needs consideration. The witnessing of abuse and CC needs to be considered in the context of a criminal offense, as well as a mental

health, and societal issue. It also requires, and deserves, substantial funding for increased research and supportive trauma-informed support services. The impacts and long-term trauma on a parent unable to protect their child, or a child unable to protect themselves or their parent, is absolutely undeniable, and yet almost entirely ignored.

Family violence can have a profound effect on children. Children who are exposed to violence are at risk for emotional and behavioral problems throughout their lifespan, and these impacts are similar to those of direct abuse. Some of these consequences include post-traumatic stress disorder, depression, low educational achievement, difficulties regulating emotions and chronic issues. Children who witness abuse, or experience other forms of abuse, are also more likely to develop narcissistic tendencies, to bully or harm other children, and to themselves become perpetrators of IPV/A and CC as adults, thus continuing the cycle of abuse. Children deserve protection, and currently the law, child and family services, and a severe lack of supports, are fundamentally failing children in this regard; to an absolutely egregious and unacceptable level.

### **Additional Recommendations:**

In addition to those recommendations and suggestions set out above, I would add the following:

1. A fully funded independent oversight body be instituted with a governance structure, mandates, and powers that include, but are not limited to:
  - Governance and administration by victims/survivors of IPV/A and CC, with a majority of BIPOC representatives and gender-based representation proportional to the rates of victims/survivors of IPV/A and CC. Representation should also include, but not be limited to, child victims/survivors (including witnesses) of IPV/A and CC, and experts with trauma-informed knowledge and/or experience.
  - The power to review decisions of, and act as interveners in, Child and Family Services cases, Child and Family Services Review Board cases, Family Law cases, police investigations, and Ombuds office complaints. With fully funded services being provided at the request of victims/survivors of IPV/A and CC, including children.
2. A fully funded commission of inquiry be instituted with a governance structure, mandates, and powers that include, but are not limited to:
  - Those described, as applicable, in recommendation #1 above;
  - Investigating, reporting on, and providing recommendations to address:
    - i. Systemic discrimination, biases, and prejudices in governmental and non-governmental institutions, mandates, processes, procedures, and employee and administrative standards and practices that enable IPV/A and CC. This should include, but not be limited to:
      1. family law courts, judges, staff, and judicial review processes and bodies ;
      2. the legal system in general, and family law and criminal laws in particular;
      3. child and family services, staff, and review processes and boards;
      4. hospitals, medical services, medical staff, and review processes and boards;

5. police and police services, staff, and review processes and boards;
  6. professional associations for lawyers, including the Canadian Bar Association;
  7. all access to justice systems, processes, institutions, and human rights protection bodies, processes, and mechanisms; and
  8. all relevant professional standards, processes, and review bodies.
- Investigating, reporting on, and providing recommendations to address:
    - i. differential standards employed in praxis, within and among the above noted bodies, based on gender (particularly women), ancestry (including place of origin, culture, and heritage), and age (children) that enable and perpetuate IPV/A and CC.
    - ii. how systemic discrimination, biases, and prejudices manifest and function within and between institutions and enable IPV/A and CC;
    - iii. how implicit biases, prejudices and attitudes of employees and actors in the above noted bodies enable and perpetuate IPV/A and CC;
    - iv. how the benefits of trauma-informed, anti-discrimination, anti-bias, anti-prejudice, and BIPOC history and cultural awareness training, would improve the wellbeing and outcomes of, and reduce the impacts on, victims/survivors of IPV/A and CC, as well as related social and economic benefits, and improvements to community wellbeing outcomes in general.
    - v. The lack of training and understanding of litigation abuse, and in particular the debunked notion of parental alienation, within the legal system, and child protection services, and its use as a means of perpetuating and enabling IPV/A and CC.
    - vi. The lack of services and supports in general, and specifically trauma-informed expertise and knowledge, for survivors/victims trying to survive and escape situations of IPV/A and CC.
    - vii. The connection between addiction, including sex, drama, and drug addictions, in relation to perpetrators of IPV/A and CC.
3. Consideration of, and research into, the benefits of a “but for” analysis in criminal and family law, and related training for family service, medical service, and legal service providers, in assessing and addressing IPV/A and CC.
  4. A serious and sincere, fully and properly funded, non-partisan, move towards a victim-based justice system, that is trauma-informed, and free of systemic discrimination, bias, and prejudice; one that actually protects women, children, and other marginalized groups. To be effective, this must include, but not be limited to:
    - a serious and sincere move towards building healthy and sustainable relational communities, grounded in diverse worldviews and perspectives.
    - Increases in mental health services and supports that are grounded in trauma-informed emergent research aimed at supporting the healing of victims/survivors,

as well as perpetrators, of all forms of violence and abuse. The importance of perpetrators being given the safety and support to heal, recover and be accountable for their actions, in a good way, in a loving way, and with the respect they deserve, cannot be understated. No human being is born wanting to be harmed or cause harm to others. Perpetrators of IPV/A and CC are almost inevitably previous victims of cycles of trauma and abuse. While accountability and restitution to victims/survivors is essential, so too is ensuring that all human beings be given the space to heal, and the love and respect necessary to have the courage to move forward in a good way.

It is my sincere hope that the House of Commons Standing Committee on Justice and Human Rights, is able to move forward on Bill C-247, in a urgent and efficient manner; because something is needed right now to help victims/survivors (particularly given increases in IPV/A and CC related to COVID). At the same time, I implore you to consider and work towards the societal systems-based changes that are necessary to address the complexity that is at the heart of IPV/A and CC. Without systemic change, and consideration of a holistic approach to building relational healthy communities, there is no way to address the cycles of trauma, abuse, and mental and physical health issues that are plaguing human beings, which IPV/A and CC are only one symptom. This change need not be done for political or other reasons, but simply because this is what all Canadians, all families, and all human beings deserve, both from their leaders and from each other.

**Additional Resources for consideration:**

Bishop, C. and Bettinson, V. (2018). “Evidencing domestic violence, including behaviour that falls under the new offence of ‘controlling or coercive behaviour’”. *The International Journal of Evidence & Proof*, 22(1).

*Cotton v Berry*, 2017 BCSC 907.

Sowter, D. (2019, December 27). Coercive control: What should a good lawyer do? *Slaw: Canada’s Online Legal Magazine*. Online at: <http://www.slaw.ca/2019/12/27/coercive-control-what-should-a-good-lawyer-do/>

Stark, E. (2012). Re-presenting battered women: Coercive control and the defense of liberty. Prepared for *Violence against Women: Complex Realities and New Issues in a Changing World*, Les Presses de l’Universite du Quebec. Online at: [https://www.stopvaw.org/uploads/evan\\_stark\\_article\\_final\\_100812.pdf](https://www.stopvaw.org/uploads/evan_stark_article_final_100812.pdf), at pg7).

**Summary of Authors Relevant Knowledge and Experience:**

My experience includes, but is not limited to, legal and human rights work with various organizations including Amnesty International Canada, the Kimberly Land Council (Australia), and the Assembly of First Nations; being a Research Associate with Ryerson University's School of Social Work (2012 - 2017); a Program Advisor in Indigenous



Policy and Administration at Carleton University (2014-2015); a teaching-professor (LTA) in the Institute of Canadian and Aboriginal Studies at the University of Ottawa (2016-2019), as well as the Aboriginal Studies Program Coordinator (2017-2018); a part-time professor at Saint Paul University in the Faculties of Human Sciences and Philosophy (2018-2019); and an independent senior advisor and consultant in my own independent practice (2008-present). I have also been privileged to participate in successful funding applications and research projects totaling over \$1,290,00 from different government agencies, including being a co-applicant and collaborator on numerous SSHRC grants, as well as a Principal Applicant on a Knowledge Synthesis grant; I have co-authored two peer-reviewed textbook chapters (the textbook being a 2019 PROSE Award finalist in the category of Textbook/Social Sciences), and authored and co-authored numerous other publications, as well as developing and teaching over a dozen university courses – including Indigenous research methods – using innovative and transformative Indigenous and decolonial pedagogies.