



Brief on Intimate Partner and Domestic Violence in Canada

Submitted to: The House of Commons Standing Committee on the Status of Women

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Organizational Background:

Established in 1977, the Ontario Association of Interval & Transition Houses (OAITH) is a provincial association that represents over 70 Violence Against Women (VAW) shelters, transitional housing and VAW community-based organizations. OAITH works with member organizations to strengthen the services they offer through training, education, public awareness, and advocacy.

Implications of the Criminalization of Coercive Control

Coercive control can be understood as “a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim” (Women’s Aid Federation of England, 2020). This pattern of abuse does not always involve physical violence, however the perceived threat of violence often operates as a way to isolate and control their partner (Neighbours, Friends and Family, 2019).

A number of countries around the world have recently created legislation that would criminalize coercive control, including England, Wales, Scotland, and some US States (Hayes et al., 2022). Research on the implementation of coercive control legal frameworks in England and Wales has found low rates of charging and conviction in coercive control cases in both of these countries (Home Office, 2021), suggesting this type of offence is not supporting survivors and cannot easily be adapted to existing judicial systems. An examination of this offence found that these types of cases were often more complex and lengthy than traditional domestic violence cases and also faced additional evidential and investigative challenges due to the complex nature of this patterned behaviour (Walklate & Fitz-Gibbon, 2019). Past research has also highlighted the shortcomings of the existing criminal offences, including low reporting and conviction rates among many existing gender-based violence (GBV) offences, which has raised questions as to the ability of this system to provide positive outcomes for all survivors (Tolmie, 2018).

Since the implementation of mandatory charge policies in Ontario, concerns have been raised due to the unintended consequences for survivors of GBV (Grace, 2019). Research has found that since this shift in policy there has been increasing numbers of women charged alongside their partner, or solely, in cases of intimate-partner violence. A study conducted with women who had been charged either with their partner, or as the sole aggressor, in intimate-partner violence cases found that many of the women charged were defending themselves from their partner's violence, and 32% had called police themselves, in hopes of receiving protective orders from their male partners (Pollack et al., 2005). The practical implementation of charging policies has historically failed to protect women from the violence they were experiencing, and has resulted in unintended harms due to the lack of gendered understanding of intimate-partner violence. These harms have disproportionately impacted Indigenous women and women from racialized communities as these groups of women are often subject to additional systemic racism and stereotypes that situate them as the aggressors rather than the victim (Duhaney, 2021), further contributing to the overrepresentation of Indigenous women and other racialized women within the correctional system. There is concern that without an adequate understanding of the complexities of GBV and how power and control manifest within intimate relationships, the criminalization of coercive control will similarly lead to unintended harms for survivors as has been seen with the implementation of mandatory charging policies.

These concerns were echoed, through the National Action Plan on Gender-Based Violence (NAPGBV) engagement sessions conducted with OAITH member organizations. When asked if participants were supportive of the criminalization of coercive control, 54% of respondents indicated that they were unsure and needed time for further reflection on the implications. An additional 21% of participants indicated they felt this legislative change would have negative impacts on survivors of GBV (OAITH, p. 16, 2021). Participants from the NAPGBV engagement sessions instead, identified the need for alternative/ non-traditional models of justice, as they expressed that many survivors do not wish to access the criminal justice system as they do not feel they can receive protection from the existing system and would like to have non-carceral options to address the violence they are experiencing. This has been supported through survivor-led research, conducted by WomenatthecentrE, which examined survivor experiences engaging with the legal system and identified the continued harms to survivors stemming from legal system interactions. This research has also heard from survivors the need for alternative models to justice that exist outside of the traditional criminal justice system, including transformative justice models that are better equipped to support and prioritize survivor needs (WomenatthecentrE, 2020).

Recommendations

- Five year funding projects to support the creation, sustained implementation and evaluation of non-traditional models to justice.
- Community based prevention and intervention services that can address coercive control prior to the escalation of violent behaviour that could constitute police engagement and/or charges.
- Mandatory, ongoing training for professionals engaged with the legal system, including police, lawyers and judges, within the criminal and the family court systems focused on risk assessment, risk management and safety. Training will increase their knowledge and capacity to respond to existing gender-based violence offences and cases within the criminal justice system, reducing the potential for harm and retraumatization for survivors who choose to engage with these systems.
- Implementation of NAPGBV Road Map recommendation to examine existing offences to determine how current offences could be better used to address manifestations of coercive control. This would require an examination of existing investigation and evidentiary rules as well as the historical failure of this system to understand and respond to gender-based violence (Dale et al., p.85, 2021).
- Federal, provincial and territorial governments need to review and assess how survivors experience coercive and financial control when perpetrators engage in ongoing vexatious family court proceedings. This is causing some survivors to avoid utilizing court systems as means to solve parenting access and support payment systems further complicating outcomes. Survivors must not bear the burden or responsibility of accessing this financial support as this creates an opportunity for abusers to prolong emotional, psychological and financial abuse.
- Invest in programs and services that support access to transitional income benefits after leaving shelter, guaranteed regular income, housing access and access to employment/education opportunities that are specifically designed to support survivors of gender-based violence.

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