

Submission to Justice Canada on the creation of a potential coercive control offence in the context of intimate relationships.

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What are the potential positive or negative impacts of a coercive control offence?

Intimate partner violence (IPV) is multidimensional in nature and encompasses numerous forms of violence. IPV is often seen as an episodic or one-time event, failing to address the complexity of the issue involving repetitive tactics used by abusers that include exploitation, manipulation, intimidation, isolation, and micro-regulation of daily life, otherwise known as coercive control. Violent behaviour 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.

IPV is part of a continuum in people's lives. It is not a one-time event. This means that violence is not just a singular and isolated incident, and it is imperative to examine all aspects of a couple's situation to assess dangerous behaviour and risk of lethality. Regardless of when the violence starts and what it looks like, it is the abuser's way of maintaining control over his partner. Since the Canadian Criminal Justice System (CCJS) primarily places emphasis on the evidence of physical violence, first responders are to find evidence of such violence. Consequently, there is a neglect to question the context of the abuse and the harm caused within these situations, which results in coercive control being unaddressed or dismissed.

Coercive and controlling behaviour encompasses the use of different physical or non-physical tactics and is more frequently deployed by men against women in the context of intimate partner relationships (Dawson et al., 2019; Stark, 2007). It emphasizes the multidimensionality of oppression that women continue to face in intimate relationships while the CCJS focus is persistently on evidence of physical violence (Stark, 2007).

Coercive control encompasses three different pillars:

- 1) denial of rights and resources;
- 2) monitoring and micro-regulation; and
- 3) control and manifestation of violence

that ultimately eliminates the victim's sense of freedom in the relationship, or what Stark refers to as "entrapment" (Stark & Hester, 2019).

The particularity of coercive control is that this type of violence is continuous and results in the accumulation of harm over time; therefore, this cannot be captured by a singular incident (Stark, 2007). The limitations of viewing IPV as a one-time event does not allow frontline responders to capture the nature of harm in coercive control situations and it is almost impossible to recognize the deprivation of rights to freedom, the obstruction of liberty, and the dynamic of power and control. It is imperative to look at the context of the relationship to understand possible reasons for the perpetrator's behaviours as well as the victim's responses to it, rather than focusing solely on incident-specific events of physical violence (Dutton & Goodman, 2005). Williamson illustrates micro-regulation as follows: "This woman cannot do anything because whatever she does is wrong" (2010: 1415). This quote refers to the fact that the perpetrator is controlling the daily activities of his partner, imposing rules that are known by him alone, resulting in harm to the victim.

The recognition of coercive control as an offence would finally be a recognition that power and control over an intimate partner is a crime against the person. This would allow those caught in abusive relationships to report when they are experiencing abuse even if it is not physical violence. Increasing the ability of the criminal justice system to respond to a pattern of violence of non-physical forms will lead police response to be less incident-focused and reduce the misidentification of victim-survivors as the primary aggressor. Too often, victims of violence will not seek help because they believe it is not serious enough. However, when they do, they are not taken seriously as it is difficult to determine how violence is occurring. It is important to reinforce women's safety (Douglas, 2021) and it requires the state to assume responsibility for responding to coercive control, which we are failing to address currently. An offence of coercive control would clearly recognize the fact that IPV is a pattern of power and control over the victim and would legitimize victims' experiences. Such an offence may also prevent intimate partner homicide.

Negative impacts of a coercive control offence have been well laid out in a research paper by the Australian Institute of Family Studies (2023). It is important to keep in mind that any changes in legislation have unintended consequences. However, they can be overcome with awareness, training, and better knowledge of the issue.

The following negative impacts are extracted from the Australian Institute of Family Studies (2023: 35).

- Concern about unintended consequences particularly for groups at risk of ‘misidentification’ which means that people who are victim-survivors are misidentified as perpetrators (see further below)
- A linked concern that perpetrators of coercive control will misuse the legal system to maintain control by, among other things, taking advantage of the possibility of misidentification to continue to control victim-survivors (see further below)
- That a criminal law response will be difficult to activate in a context where some elements of coercive control will be difficult to evidence to the criminal standard (beyond reasonable doubt)
- That engagement with the criminal justice system has the potential to re-traumatise victim-survivors to an extent that may outweigh any benefit to them (Tolmie, 2021; Walklate and Fitz-Gibbon 2019). See further below.
- Potential procedural barriers to the successful prosecution of an offence, as well as the difficulties of proscribing specific descriptors to behaviours that by their nature are tailored by the perpetrator for the individual victim-survivor (Walklate & Fitz-Gibbon, 2019)

Considering the potential impacts of a coercive control offence, it is imperative that its adoption and implementation should be done in conjunction with the development of a risk assessment and training for frontline police officers who have the responsibility to make the determination of IPV as a crime.

In 2020, our research team conducted several workshops with police officers from across Canada to raise awareness about coercive control and to inquire about police perceptions of the issue. Police response to IPV is prescribed by laws and policies in place. However, an important part of their response will also be conditioned by perceptions and understandings of the issue. It is clear from our workshops, that police officers understand they need further information and mechanisms (tools) to better address IPV. The perception of what constitutes IPV for frontline police officers and the limitations of specific risk assessment tools can influence the actions that will be taken on scene (Gill et al., 2021). The emphasis within risk assessment tools on physical violence and injuries leads to the minimization of non-physical violence. Our research focuses on

addressing the following questions: Are police officers well equipped to assess all forms/manifestations of IPV situations, including non-physical violence? Do they have enough understanding of patterns of violence to recognize if they are in the presence of a potentially harmful situation? Misperceptions police officers may share about IPV can lead to a quick response with no further action taken if there is no physical evidence of violence while potentially leaving a victim in a dangerous situation (Gill, Aspinall, Cousineau & Dawson, 2023a).

Our team developed a national framework for policing coercive control with police officers from across the country. This framework is under review by members of the Crime Prevention, Community Safety and Well-being committee at CACP and will be piloted across Canada along with a risk assessment tool focusing on coercive controlling behaviour in the years 2026-27. Police officers are not trained yet to address coercive control and are not thinking in terms of a pattern of violence. Along with CACP and partnering with the First Nations Chiefs of Police Association (FNCPA); the Association des Chefs de police des Premières Nations et Inuits du Québec (ADPPNIQ); the Réseau Intersection; the Canadian Police Knowledge Network (CPKN); and the École nationale de police du Québec (ENPQ) our work will prepare police officers to better understand and address the issue, providing training to police agencies about the national framework and the risk assessment tool.

### **Limitations from police response to IPV**

Within Canada, police officers often adopt a risk-led approach to assessing IPV situations, in which decisions to arrest are not made based on the history of the relationship and other contextual factors; instead, are focused on the immediate conflict and evidence of physical harm or property damage. There are several formal risk assessment tools available to frontline police officers, and research with officers in support of utilizing risk assessment tools identified they feel they provide useful information regarding relevant criteria to assess, and that this could be especially helpful for new recruits or those with less experience (Ballucci et al., 2017). The most commonly used risk assessment tools by police officers are actuarial and structured professional judgement tools such as the Ontario Domestic Assault Risk Assessment (ODARA), the Spousal Assault Risk Assessment (SARA) and the Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER). However, such tools do not effectively capture all possible risk factors for IPV, especially when the situation involves coercive control and other non-physical tactics of abuse.

Specifically, the ODARA requires that an act of physical violence has taken place during the most recent incident in order for police to score the assessment (Hilton et al., 2004), and the SARA and B-SAFER refer to violence as “actual attempted or threatened physical harm” (Kropp et al., 2005). Since there is concentration on physical violence, this may encourage a continued dismissal and disregard of non-physical tactics of abuse and behaviours that take place over an extended period of time. We, and other researchers (McCormick, 2020) consider it necessary to include patterns of coercive control in existing or newly developed risk assessment tools.

In January 2022, our team conducted an online survey, in collaboration with the Canadian Association of Chiefs of Police (CACCP), regarding police officers' perceptions and experiences in responding to IPV and was conducted with police officers across Canada. The objective of this survey was to inform the future content and delivery of training packages, strategic decision-making, and organizational protocols in the area.

As a result of our national survey conducted with police officers across Canada (Gill, Aspinall, Cousineau & Dawson, 2023b), we found that 72% of officers had received some formal training on responding to IPV calls; however, some had not received information since their time in the police academy. Of greater concern, 28% advised they had never received any formal training. Without knowledge of IPV and coercive control, police officers may not recognize that what they are responding to is dangerous. In reviews of intimate partner homicide files, common risk factors have included a history of violence in the relationship, separation, escalation of abuse, and obsessive behaviour displayed by the perpetrator (Gill & Aspinall, 2021; Office of the Chief Coroner Ontario, 2019), some of which constitute the presence of coercive control. Additionally, lack of knowledge of IPV and coercive control poses difficulties for police to correctly identify the primary aggressor in a relationship. Increased knowledge and ability to assess for evidence that does not rely on the sole presence of physical violence will further assist women who have otherwise been charged. Research indicates that much of the violence inflicted by women against their male partners occurs as a result of ongoing victimization and is reactionary or defensive in nature (Miller, 2005; Miller & Meloy, 2006; Poon et al., 2014; Poon, 2018), Aspinall's (2021) dissertation research, which consulted with IPV intervention programs facilitators across Canada, confirmed that many of the women they served had inflicted defensive violence against a partner that was abusing them; however, the abuse went unnoticed because she was the one to leave a mark.

Prior to the dissemination of our national survey, consultations were had with police officers across Canada. It was promising to learn that some police officers are recognizing that coercive control is a reality and understand that a larger issue is at play in many situations they are called to respond to. However, they reported that unless physical violence or property damage was identified on scene, it can be difficult to respond. Additionally, members do not have many tools available to effectively assess for coercive control (including existing risk assessment tools at their disposal), there are gaps that exist between what frontline police officers may recognize and what is available in the Criminal Code, other protective measures (such as Emergency Intervention Orders) may not be granted without some type of recent physical or threat of physical violence, there is no legislative support to address controlling behaviours, and that police would benefit from further education and training. The latter was echoed by police officers who responded to the national survey, with 40% of respondents indicating they considered that further training in IPV would be beneficial.

A combination of all these issues, such as limited definitions and policies on coercive control within police agencies, lack of legislation to address and criminalize coercive control, and risk assessment tools that do not encourage police officers to ask additional questions, result in a lack of awareness and dismissal of coercive control in intimate relationships.

### **The need for a coercive control offence**

An offence of coercive control needs specifically to include a definition reflecting the various aspects of violence: micro-regulation of someone's life; deprivation; and manifestation of violence. The offence needs to focus on the aggressor's behaviour, to include an article for children allowing the legislator to recognise children as co-victims of coercive control and ensure that actual partners and/or ex-partners are included in the legislation.

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