



COERCIVE CONTROL BRIEF

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Recommendations

1. Immediately implement a new nation-wide working definition of domestic violence to reflect coercive control.
2. Canadian criminal laws be changed to reflect coercive control. (Using Scottish laws as the gold standard of effective coercive control legislation. Please note section 76 of the 2015 Serious Crime Act is currently under review with a proposed enhanced Domestic Violence Act being discussed in the House of Commons)
3. Support nation-wide training for police, judges, and crown prosecutors on the framework of coercive control in domestic and sexual violence.
4. Appoint a Coercive Control and Abuse Commissioner for Canada with expertise in domestic and sexual abuse (including sexual exploitation) to provide public leadership on abuse issues and play a key role in overseeing and monitoring the provision of abuse responses with a focus on coercive control. The Commission should hold the power to publish reports and put them before Parliament – holding systems and government to account and hold public bodies and Ministers accountable to respond to recommendations made by the Commissioner (see UK model <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-commissioner-factsheet>)

Overview

Violence, when it involves the use of force, has been easily understood and categorized regarding its effect on victims and motivations of perpetrators. However, this understanding of violence is limited and does not accurately reflect the experiences of those whose lives have been impacted by violence, especially when there was no use of force. For those whose sense of personal agency has been taken away, without a fist ever being raised, narrow definitions of violence can lead to victims feeling like they cannot express their pain or access treatment because their experiences of violence do not fit into what society typically defines as such. The impacts of coercive control on individuals violates “human rights that are protected by The Universal Declaration of Human Rights, The Canadian Charter of Rights and Freedoms and Canada’s Human Rights Act, which protect equality rights, freedom of expression, rights to be free from harassment, and rights to live a life with dignity” (Lee, Wells, Gray & Esina, 2020).

Domestic violence practitioners and researchers have historically focused on trying to explain the experiences of victims of violence through a framework of incidents referred to as the violence-incident model (Alberta Protection Against Family Violence Act 2000, Canada's Criminal Code). This model's definition of domestic violence focuses on discrete incidents of physical violence. The violence-incident model focuses on the use of force by perpetrators and denies the reality that victims of non-physical abuse experience longer and more harmful impacts than victims who experience only physical violence (Stark, 2010).

Stark, echoing the findings of the Statistics Canada found that 60-80% of abuse reported to services involve non-physically abusive tactics. The majority of the types of violence experienced by victims of domestic violence are designed to induce fear and control a partner in ways that impact dignity and liberty causing long term consequences to a victim's life. (Stark, 2010, Stats Can, 2014). The violence incident model denies the true experience of victims of domestic violence whose experiences are "ongoing, historical, frequent, but generally low-level" assaults (Stark, 2012). Using coercive control to understand domestic violence addresses the limitations of the violence-incident model and more effectively supports victims of domestic violence to regain personal agency and perpetrators to receive appropriate interventions. Myhill's finding that using a coercive control framework is critical as it reflects the "multiple tactics of coercion and control employed by primary perpetrators" of domestic violence (2017, p.39) can be applied to all victims of all forms of violence. Coercive control reflects the experiences of all victims of ongoing, historical, frequent, and low-level violence.

The limiting nature of the violent-incident model has led domestic violence practitioners to search for new ways to understand the behaviours of victims of domestic violence, with a focus on attempting to understand the nature of behaviours of the "woman in the cage – what is she doing? Why does she pace? Why does she not leave that space?" (Lee et al, 2020). Evan Stark's work in the area of domestic violence has been in response to these questions. Stark understands coercive control to be a "strategic course of self-interested behaviour designed to secure and expand gender-based privilege by establishing a regime of domination in personal life." (2013, p. 21). Stark's framework of coercive control has had a profound impact on understandings of domestic violence on both sides of the Atlantic. His framework has led to legislative changes in the UK, Wales, Scotland and Ireland and has had legal implication in Canada and the United States. When a new nation-wide working definition of domestic violence to reflect Stark's definition of coercive control was implemented in the UK it increased calls to the police by 31% over a three-year period (Stark & Hester, 2019).

England, Wales, Scotland, and Ireland have adopted definitions and understandings of coercive control that have guided service provision and funding. These terms did not have legal standing until 2015 when the British Parliament passed Section 76 of the Serious Crime Act 2015 establishing the criminal offence of 'coercive and controlling behaviour'. In early 2019, Section 39 of the new Domestic Violence Act made coercive control a criminal offence in Ireland and expanded the application of the law to past or present intimate partners (Gill & Aspinall, 2020) and in April of 2019 Scotland passed the Domestic Abuse Act 2018. The Scottish Act is perhaps the broadest and yet most targeted in its application of coercive control. It is broad in its application to children, current or ex-partners, and takes into account the impact of abuse on the victims and targeted in that it identifies and implements a new legal offence of domestic violence (Gill & Aspinall, 2020).

Although legislation has been critically influential in supporting both a societal and legal shift in the understanding of domestic violence, they are nascent as legal mechanism to address coercive control and their value in detection and prevention coercive control is not yet fully known. Many of the criticisms of the earliest act, S.76 of the Serious Crime Act 2015, have been addressed by subsequent legislation and in the UK, there is currently a review in progress which has addressed many of the criticisms of the initial Serious Crime Act 2015. Nicole Jacobs, the Domestic Abuse Commissioner has stated that the update Domestic Abuse Bill will address and respond to criticism about the clarification of its application to all forms of physical and sexual abuse, which cases to apply this legislation to, the inclusion of a contemporary feminist lens and the need to extend the law to compel government to provide statutory supports for victims and perpetrators.

The UK, Irish, and Scottish legislation each frame domestic violence within coercive and controlling behaviours. The definitions used in each of the Acts reflect the low level, repetitive, pattern of behaviours that are coercive and controlling. In jurisdictions that have adopted this legislation, there are clear guidelines as to what constitutes coercive and controlling behaviour and how to investigate offences in relation to coercive and controlling behaviour (British Home Office, 2015).

Section 76 of the Serious Crime Act 2015 was developed with the intention to be used as preventative pieces of legislation, understanding that coercive control is one of the biggest indicators of homicide. It was hoped that through the application of this legislation to coercive and controlling behaviours, in a way that made them illegal, it would be easier for the state to intervene before the risk of homicide increases. According to the UK Office for National Statistics in the 12-month period ending in March 2020, there were 24,845 offences of controlling and coercive behaviour recorded by the police in the UK. This number represents approximately 3% of overall police reported offences. This number of controlling and coercive offences reported by the police increased 30% in the 12-month period between March 2019 and March 2020. It appears that this is an additional tool being used by police in England and Wales to intervene before risk increases.

The England and Wales Context

Coercive or controlling behaviour is a form of domestic violence and abuse. It is a criminal offence in intimate or familial relationships in England and Wales under the *Serious Crime Act 2015 section 76* and carries a maximum sentence of 5 years, a fine or both. The offence of coercive control came into force on December 29, 2015.

The offence is constituted of behaviour on the part of the perpetrator which takes place *repeatedly or continuously* where the victim and alleged perpetrator must be *personally connected* at the time the behaviour takes place. The behaviour must have had a serious effect on the victim, meaning that it has caused the victim to fear violence will be used against them on at least two occasions, or it has had a substantial adverse effect on the victims' day to day activities. The alleged perpetrator must have known that their behaviour would have a serious effect on the victim, or the behaviour must have been such that he or she ought to have known it would have the effect (Serious Crime Act, 2015).

The offence closes a gap in the law around patterns of controlling or coercive behaviour that occurs during a relationship between intimate partners, former partner who still live together or family members. This offence sends a clear message that this form of domestic abuse can constitute a serious offence particularly in light of the violation of trust it represents and provides better protection to

victims experiencing repeated or continuous abuse. It sets out the importance of recognizing the harm caused by coercion or control, the cumulative impact on the victim and that a repeated pattern of abuse can be more injurious and harmful than a single incident of violence.

The Scottish Context

In 2018 Scotland passed the *Domestic Abuse Act* building on the learnings from the England & Wales *Serious Crime Act 2015* outlining the more comprehensive offence of partner abuse. The *2018 Scottish Domestic Abuse Act* is intended to capture the patterns of harm that constitute intimate partner violence (IPV), including behaviours that fall within existing interpersonal violence offences and those that do not (Tolmie, 2018).

What is Coercive Control?

Coercive control is a pattern of violent behaviour that seeks to take away a person's freedom and to strip away their sense of self. The person using violence creates a world in which the person experiencing coercive control is constantly monitored and criticised; their every move is checked against an unpredictable, ever-changing, unknowable rule book.

The following types of behaviour are common examples of coercive control:

- Isolating the individual from their friends or family
- Depriving of them of their basic needs
- Monitoring a person via online communication tools or using spyware
- Controlling how much money they have and how they spend it
- Monitoring their everyday activities and movements
- Repeatedly putting them down, humiliating them, calling them names, or telling them that they are worthless
- Threatening to harm or kill them or their children or their pets
- Threatening to publish information about them or to report them to the police or the authorities
- Damaging their property or household goods
- Forcing them to take part in criminal activity or child abuse

This list is not exhaustive. Physical violence may be used alongside these other tactics of isolation, mind-games and the micro-regulation of everyday life or it may never be present other than as a threat or perceived.

What does serious effect mean?

The perpetrator's behaviour is considered to have a serious effect on the survivor if:

- On at least two occasions they have feared that violence will be used against them, or
- They have felt serious alarm or distress and it has had a substantial effect on their usual day to day activities. The behaviour has had a substantial effect on the survivor if it has caused them to change the way they live. For example, they may have changed the way they socialize, their physical or mental health may have deteriorated, they may have changed the way they do household chores or how they care for their children. If they have changed the way they live in

order to keep them or their children safe from harm, it is possible that the behaviour they are experiencing is coercive control.

What does personally connected mean?

Someone who is personally connected to the victim/survivor can commit an offence of coercive control. Two people are personally connected if they are in an intimate personal relationship (i.e. partners, spouses, someone they have a romantic or sexual relationship with, including same-sex relationships). Experiences of coercive control still pertain even if the intimate partner relationship has ended, if the partners no longer live together, did not live together at the time of the offences of coercive control or at anytime during their relationship.

Personally, connected also applies to family members who use coercive control. A family member could be anyone they are related to or have a child with, or any person who they have ever entered into or agreed to enter into a marriage or civil partnership with. A family member can also be a person who their spouse is related to and that they live with, for example, their spouse's parents who they live with.

How does someone prove coercive control?

It is the job of the police to investigate any reports of coercive control and gather evidence, not the victim/survivor. If the victim/survivor is considering gathering evidence first before reporting or helping the police to gather evidence after they have reported, it is important that their safety is considered. Within both the UK and Scottish legislation allowances are made for informal supporters' evidence of coercive control to be considered as part of evidence gathering and reporting.

The following are types of evidence that may be helpful in coercive control cases:

- Copies of emails, text messages or voicemail recordings, photographs of injuries or damage to property.
- Evidence of financial abuse may be shown by bank statements or a diary of day to day experiences.
- They may be able to show that they have lost contact with friends and family members, left their employment or withdrawn from clubs or other activities.
- Their medical records may show that their abuser accompanies them to appointments.
- It is common for abuser to make or threaten to make false allegations about their victims to police, social services, immigration authorities or to friends and family. These threats or allegations are part of coercive control and can also be reported to the police.

The Law in Practice:

Making sense of intimate partner violence has long been seen through the lens of coercive control. However, despite the longstanding presence of this concept, it is only in recent years that efforts have been made to recognise coercive control within the legal context.

Focusing on coercive control is crucially important in devising measurements because that provides and reflects the "multiple tactics of coercion and control employed by primary perpetrators" of domestic violence (Myhill 2017). Focusing only on events that are deemed criminal offenses, may exclude the many other threats that make up ongoing coercive control and have detrimental impacts. (Stark and Hester, 2019)

Current high attrition rates, sentencing data and low conviction rates in cases of domestic violence are evidence that our system does not adequately recognize the experience of victimization or the harm perpetrated. (Donovan and Barnes, 2018)

Canadian violence against women surveys have seen to have shown similar prevalence estimates of domestic violence for men and women. However, according to Tjaden & Thonnes (2000), when a more nuanced analysis of the data was examined there was a much higher prevalence for women experiencing domestic violence, when frightening threats and sexual coercion were taken into account.

Relationships with coercive control result in greater injury to the victim and are characterized by more frequent and severe violence are less likely to desist (Myhill, 2015). The increase in severity, makes the need for legal intervention in cases of coercive control even more imperative, to intervene, interrupting the escalation and frequency of the abuse.

Within the first three years of implementation of the working definition of coercive control in the UK calls for support to the police went up 31%. (Stark & Hester, 2019).

Coercive control recognizes the gendered nature of domestic violence. According to the Crime Survey for England and Wales, coercive control is experienced overwhelmingly by women at a rate of 5 to 1 (Myhill, 2015).

The coercive control framework reflects the actual reality of the experiences of those impacted by domestic violence, reflecting the complexity of domestic violence, contextualizing individual acts in an overall picture of coercion and control. Over 95% of victims of domestic violence have reported experiencing coercive control (Myhill, 2017).

The Canadian Context:

Domestic violence is at epidemic levels in Canada. Rates of domestic violence have increased approximately 30% since the beginning of the COVID 19 pandemic. More than 50 percent of Canadian women over the age of 16 have been victims of physical or sexual violence – at any stage in their lives (Statistics Canada). Domestic violence, including both spousal and dating violence, accounts for one in every four violent crimes reported to police in Canada (Statistics Canada). Less than one quarter of victims of domestic violence report to the police (Stats Can, 2014). Recognized as a public health issues, domestic violence can have far-reaching consequences on not only the direct victim, but also on families, communities, and society at large. It is estimated that Canada (and the rest of the world) will see domestic violence rates increase at least 30% because of COVID.

A Justice Canada study estimated the cost of spousal violence, one type of domestic violence, on Canadian society at \$7.4 billion in 2009 (Zhang et al, 2013). Most of these costs were related to victim costs, such as pain and suffering, counselling and legal fees for divorce, while the next highest costs were borne by third parties (i.e. families, employers and social services) and the criminal and civil justice systems (i.e. police, courts, corrections) (Zhang et al, 2013).

Statistics from British Columbia provide a snapshot about what happens in provincial criminal cases where criminal charges are laid. Research conducted over a decade found that the conviction rate for domestic violence charges submitted by the police and approved by the Crown was 49%, a much lower percentage than non domestic violence cases, of which 70% resulted in charges. Stays of proceedings in

domestic violence cases were also 11% higher than in non-domestic violence cases. In cases in which a trial date was not set, there was a higher rate of peace bonds and a lower rate of stays, more consistent with non-domestic violence cases. According to the Statistics Canada report from 2014 this suggests that domestic violence trials end with stays more frequently than non-domestic violence cases (British Columbia Justice Reform Initiative, 2012).

The Canadian Bar Association in its 2013 paper *Reaching Equal Justice* acknowledged that an access to justice crisis exists in domestic violence cases in Canada (Koshan, 2020).

The *Criminal Code of Canada (CCC)* does not specifically identify family violence as an offence, most acts of family violence in Canada are crimes under different sections within the CCC. Including:

- Assault (causing bodily harm, with a weapon and aggravated assault – ss. 265-268)
- Kidnapping and Forcible Confinement (ss. 279)
- Trafficking in persons (ss. 279.01)
- Abduction of a young person (ss. 280-283)
- Homicide (murder, attempted murder, infanticide, and manslaughter ss. 229-231 and ss. 235)
- Sexual assault (causing bodily harm, with a weapon and aggravated sexual assault ss. 271-273)
- Sexual offences against children and child pornography (ss. 151, 152, 153, 155, 170-172 and 163.1)
- Criminal harassment (sometimes called stalking ss. 264)
- Uttering threats (ss. 264.1)

Canada does criminalize harassment, assault, sexual assault, and stalking. However, nowhere in the CCC do the words “coercive” or “controlling behaviour” appear. Although there is no mention of coercive control, Canadian courts are familiar with this form of abuse.

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