# Coercive Control: Exploring Alternatives to Criminalization



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Submitted by: Ontario Association of Interval & Transition Houses (OAITH)
Prepared by: Lauren Hancock, Policy and Research Coordinator (OAITH)

## **Organizational Background**

Established in 1977, the Ontario Association of Interval & Transition Houses (OAITH) is a provincial association that represents over 80 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, research, education, public awareness, and advocacy.

## **Background/Rationale**

The following brief will examine the impacts of existing criminalization models as well as explore alternative policy options that aim to address and end gender-based violence (GBV) in all its forms, including coercive control and non-physical manifestations of violence. This research has been informed by a literature review examining the impacts and unintended consequences of the criminalization of coercive control. To ensure that survivors' experiences are included in this analysis, OAITH has also held ongoing consultation with GBV organizations as it relates to the possible creation of a coercive control offence. Beginning in 2021, OAITH provided member feedback on this issue through our consultation and report on the National Action Plan to End Gender-Based Violence (Hancock & Wardell, 2021). In 2022, OAITH also provided a written submission, on the possible implications of criminalizing coercive control, to The House of Commons Standing Committee on the Status of Women (Hancock, 2022). Building on these previous consultations, a survey was disseminated throughout OAITH's member organizations, examining indicators and possible benefits or negative outcomes associated with the criminalization of coercive control. Fourteen responses were provided through this survey from GBV organizations with representation from each regional service area in the province. Although OAITH typically uses the language of survivor when discussing those who have experienced GBV, for the purpose of this report, the terms survivor and victim are both used to reflect varying contexts.

Coercive control can be understood as a form of GBV that involves a pattern of behaviours that are used to control, dominate, and exert power over another individual. These behaviours can include physical and non-physical behaviors, including monitoring, surveillance, restriction of personal autonomy and freedoms, financial control, deprivation of basic needs, extortion and threats of violence towards the victim, pets or family members, as a means to further control and power over an individual. Coercive control is a form of gendered violence, which is most commonly perpetrated by men against women, often within the context of a current or former intimate partner relationship and is rooted in gender inequities and patriarchal ideologies that promote power, control and male entitlement (Barlow & Walklate, 2022).

Although not new, coercive control and its impact on victims, including the loss of personal autonomy and liberty, is not well understood by many systems, including police, the criminal justice system and child welfare. Due to a lack of understanding about GBV and the impacts that these patterns of coercive and controlling behaviours have on victims and survivors of GBV, these behaviours are often minimized and overlooked. Previous research has identified many of these controlling behaviours, however, as potential risk factors for lethality (Domestic Violence Death Review Committee Annual Report, 2018), highlighting the importance of intervention and prevention initiatives to address these types of behaviours, prior to the escalation of physical and potentially lethal violence.

## The Unintended Consequences of Criminalization of Coercive Control

Globally, countries have had varied responses to addressing coercive control with some countries, in recent years, moving to criminalize coercive control. The effectiveness of the criminalization of coercive control remains unclear as much of this legislation has only recently come into effect. Other legislation, such as that of New South Wales, has not fully come into effect and as such cannot be evaluated for any unintended consequences or its efficacy at addressing and preventing coercive control.

An evaluation of the implementation of Scotland's Domestic Abuse Scotland Act (DASA) has highlighted a number of concerns about survivor experiences with this legislation. While this legislation was designed to capture a pattern of controlling and abusive behaviours, there have been concerns raised about the ability for a pattern of behaviours and non-physical manifestations of violence to be criminalized. Challenges have included proving non-physical manifestations of coercive control, such as using smart devices to deprive a survivor of sleep or other basic necessities (Houghton et. al., 2022, p. 29-30). Despite the availability of evidence, such as phone logs and social media records, proving ongoing harassment and control, survivors noted concerns that these behaviours were often minimized and overlooked by the criminal justice system (Houghton et. al., 2022, p. 29-30). Survivors may also be at an increased risk for violence when trying to document or obtain evidence proving non-physical manifestations of abuse.

Further, survivors reported there was an overemphasis by police and the courts on incidents that involve physical assaults or violence, which contributed to increased frustration and trauma as certain components of their experience of abuse were not validated (Houghton et. al., 2022, p. 28). Survivors have also raised concerns about the minimization of risk factors for lethality, such as strangulation, when prosecuted under the DASA. One survivor detailed her experience of the DASA and noted concerns that all incidents were categorized and prosecuted under one charge and felt that had the aggressor not been her partner, his charges would have been greater. Although the case involved strangulation and threats involving a weapon, because the offence was prosecuted all together under the DASA, the accused received a nine month custodial sentence (Adams & Jarvis, 2023). The minimization of non-physical forms of violence is in stark contrast to the intended purpose of this legislation and may force survivors to wait until the escalation to physical violence before they are able to access protection through the criminal justice system. Despite the intent of the legislation, there are substantial concerns that these results confirm that the criminal justice system cannot adequately respond to coercive control and non-physical manifestations of violence and the harms this may cause survivors who are seeking justice and protection.

Concerns have also been raised about the possible misuse of this legislation by those causing harm, as a means to further control and harm their partner. Criminal and family courts have and continue to be used to further control, isolate and harm survivors. This can cause further psychological harm and ongoing litigations may also be used as a tool to further financial abuse and control (Gutowski & Goodman 2022; Douglas. 2017). Without adequate training and understanding of the ways in which controlling and abusive behaviours manifest, police and other criminal justice professionals can misinterpret and misapply legislation in ways that perpetuate this harm.

A clear example of the harms of the misuse and misapplication of existing legislation can be seen in Ontario through a review of the unintended consequences of mandatory charging policies. A study from 2005, examined a number of cases involving women who had been charged dually with their partner or as the sole aggressor in cases. In the majority of these cases, it was determined that women had been trying to defend themselves from violence perpetrated by their partners. In 32% of these cases, the women had called police seeking protection, however, were ultimately charged despite their own victimization (Pollack et. al., 2005). These findings have also been echoed through more recent studies, with one study reporting 95% of cases examined involved a victim's criminalization due to their attempts to defend themselves against their abusive partner. In at least 30% of these cases, the victims reported that their partners had a documented criminal history of perpetrating violence but that this evidence was never considered within their own proceedings. The impacts of mandatory charging policies and the inadequate police application of this legislation continues to disproportionately affect Indigenous, Black and racialized women due to systemic racism. (Duhaney, 2021; Counterpoint Counselling and Education Cooperative, 2023; Barbra Schlifer Commemorative Clinic, 2023).

The impacts of the criminalization of survivors are numerous and can result in a loss of housing, and employment, increased mental health challenges as well as implications for parenting time. The experiences also increased victims distrust of the criminal justice system and police, increasing their vulnerabilities as they felt there was no where they could go to receive protection (Counterpoint Counselling and Education Cooperative, 2023). Due to the current realities for victims who wish to engage with the criminal justice system, and the harms that result from the misapplication of GBV related legislation, it is not evident that police will be able to effectively respond to coercive control within a criminal framework. And there are significant concerns that further criminalization, including the creation of a coercive control offence, will be used as another tool to abuse, control and harm victims.

Other concerns have also been raised about this system's ability to effectively respond to GBV. Currently, the lack of oversight and enforcement of bail and probation orders is resulting in lethal outcomes as seen through OAITH's ongoing femicide reporting. Between November 26, 2022 and September 30, 2023, at least 10 women have been killed by a man who was subject to bail or probation conditions at the time of the killing (OAITH, 2023). Due to the reliance on media reporting in this data collection, this number may be an underestimation of the true rate. This is an alarming trend that cannot be ignored and must be addressed prior to any further criminalization.

There are also concerns about the impact of a new criminal offence on survivors who do not wish to engage in this system. As has been reported by GBV shelter supporting survivors, many women want the violence and abuse to stop but do not necessarily want to criminalize their partner. In fact, survivors may be at an increased risk of violence during separation, and pending court proceedings (Domestic Violence Death Review Committee Annual Report, 2018). In recognition of the financial abuse and control that often occurs within GBV, survivors may also be financially dependent on their abusive partner and the criminalization of their partner may have significant economic impacts on the survivor and their family.

It may also increase the survivor and children's risk for retraumatization and create greater instability (Rhodes et. al., 2010). There are concerns that the criminalization of coercive control may dissuade survivors from connecting to services, for fear that it will result in their partner's or even their own criminalization. It is imperative that survivors' choice is respected, and that the criminal justice system does not replicate the dynamics of power and control within policies developed to address coercive control. Further, survivors need to be provided alternative options to accountability, which can address and change their partner's harmful and violent behaviours to prevent further violence from occurring regardless of their intention to involve the criminal justice system.

# **Policy Options**

#### Criminalization

While criminalization of coercive control has been implemented as a possible solution to addressing coercive control, the impacts and benefits of these types of offences have not proven to be successful. Further, the potential for this type of legislation to be misapplied and/or misused by police and abusers and further harm survivors cannot be overlooked. Further criminalization does not afford protection or safety for those experiencing harm, but rather it responds to and seeks to punish incidences of violence. Without meaningful investments into policies that address the root causes and aim to eradicate violence, there will continue to be significant costs for policing and the criminal justice system to respond to violence. Further, without meaningful opportunities to intervene and change harmful behaviours and to prevent future violence from occurring, women, their children and gender-diverse individuals will continue to experience GBV in all forms, including lethal forms of GBV such as femicide.

## Community-Based Intervention and Alternative Models for Justice

The criminal justice system is not always the preferred choice for survivors and there continues to be concerns about the levels of protection and accountability that are available to those who wish to engage with this system. It is imperative that policies addressing coercive control do not replicate the same dynamics of power and control and must respect survivors' personal autonomy and choice. Ensuring that programs and initiatives can be accessible at the community level, prior to the escalation of physical violence will work to enhance survivors' safety by providing earlier opportunities for intervention and help to prevent future violence from occurring. Sustainable investments into community-based services that address and change harmful behaviours that can be accessed regardless of criminalization will be a necessary step at addressing and eradicating GBV within Canada.

#### **Public Awareness Initiatives**

A noted benefit of the criminalization of coercive control is that this could improve public awareness of coercive control and understanding of the dynamics of power and control and the impacts on a person's autonomy, liberty and freedoms. An increased awareness and understanding of coercive control could also help those who may be experiencing this type of violence identify that these behaviours are harmful and abusive, which could in turn empower survivors to connect to services or supports. A criminal offence is not necessary, however, to improve societal understanding and awareness of coercive control. By investing in an ongoing public awareness campaign, the goals of increased awareness and understanding of coercive control within society can be achieved. This approach may also be able to have a greater reach, ensuring that those who may have experienced harm and are distrustful of the criminal justice system are not dissuaded from accessing services or supports, for fear this would lead to further traumatization or the criminalization of their partner or themselves. Educational initiatives that address harmful ideologies will help to increase society's understanding and knowledge of GBV and can shift harmful views that perpetuate violence within society. A standalone awareness campaign will be better suited to achieve the intended purpose of increased awareness and understanding and will help to ensure that survivors feel empowered to connect with services, regardless of their intent to engage with the criminal justice system.

#### **Recommendations:**

To address and prevent all forms of GBV including coercive control, we recommend the following actions and initiatives:

## Community-Based Intervention

Funding to support community-based prevention, intervention services and other alternative forms to justice will be necessary steps in ending and preventing GBV in all its forms, including coercive control. These programs can address abusive behaviours, such as coercive control, prior to the escalation of violent behaviour that could constitute police engagement and/or charges. Further, by working to shift harmful beliefs and change harmful behaviours, these programs will help to prevent future violence from occurring.

#### **Public Awareness**

In order to improve awareness and understanding of coercive control and its impacts on survivors and their children, a public awareness campaign should be created and launched across the country. This initiative should be available in a variety of commonly spoken languages and should help to identify the signs or behaviours associated with coercive control and connect those experiencing harm to local community-based services.

#### **Recommendations:**

# <u>Increased Funding to Community-Based GBV Organizations</u>

Funding will be needed to ensure that GBV organizations can respond to potential increases in demand for services that may result from a national awareness campaign. Further, meaningful and sustainable investments to GBV organizations to provide education and prevention initiatives in their local communities is necessary to address the root causes of GBV, promote gender-equity and inclusion and to create a country that is free from gendered violence.

### **Enhanced Training**

Enhanced training for all levels of policing, criminal justice actors such as lawyers, judges, bail and probation officers and child welfare service providers is necessary to improve identification and understanding of coercive control and non-physical manifestations of abuse and violence. This training is required to improve the current responses of these systems to GBV and ensure high-risk factors are identified and managed as well as to mitigate the harm experienced by survivors who engage with these systems. This training should be provided by experts that can speak to the complexities and nuances of GBV and the impacts of this violence and should be provided on an ongoing basis to ensure it is reflective of current situations and experiences. Meaningful and timely implementation of Bill C-233 at the federal level, as well as similar provincial legislation, will be an important first step, and provides a framework for expansion of this training to other systems including police, bail and probation and child welfare.

## **Housing**

Without access to safe and affordable housing, many survivors may be forced to remain living with an abusive partner, putting them at risk for ongoing violence. To ensure those experiencing harm can safely escape and live free from violence, the right to housing must be recognized. Further, sustainable investments are needed to support the creation of safe and affordable housing, including rent geared to income housing units, transitional/supportive housing units and affordable housing units, and resolve the current housing crisis.

## **Income and Employment Supports**

To address gender inequity and reduce barriers for survivors looking to escape violence and abusive relationships, there is a need for increased income supports and employment/training programs for GBV survivors. These supports can help to offset the financial impacts of coercive control and intimate partner violence and ensure that survivors can escape violent situations safely.

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