

# Criminalizing Coercive Control in Canada: Learning from an International Comparative Analysis

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## ABSTRACT

While coercive control and its role in family and intimate partner violence is not new, there has recently been an emerging movement toward its criminalization in various jurisdictions. This article does not argue that Canada should criminalize coercive control. Instead, given the recent interest in its criminalization, it simply examines how coercive control could be criminalized in Canada. This article begins by reviewing proposed theories and definitions of family violence, intimate partner violence, and coercive control. However, despite extensive literature on these topics, broad conclusions that can be drawn are limited, given the use of varying definitions and theoretical frameworks. Nevertheless, emerging empirical research has attempted to identify and measure coercive control's key underlying constructs to standardize the operationalization of the term. This article examines this literature alongside legislation against coercive control from other jurisdictions to understand how coercive control could be better addressed legislatively in Canada. However, this article cautions against the likelihood that adding a new criminal offence on its own will have a meaningful effect in helping address the larger issues of family and intimate partner violence. Thus, this article concludes by offering three recommendations to ensure that a coercive control offence has its desired effect.

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**Key Words:** Coercive control, family violence, intimate partner violence, criminal legislation

## I. INTRODUCTION

Both family violence (“FV”) and intimate partner violence (“IPV”)<sup>1</sup> are serious public health concerns in Canada.<sup>2</sup> In 2021, there were 127,082 victims of police-reported FV, which marked an increase for the fifth consecutive year.<sup>3</sup> Of these victims, women and girls represented more than two-thirds (69%), and the rate of FV was more than two times higher for women and girls than for men and boys. As for IPV, 114,132 victims reported IPV to the police, which marked the seventh consecutive year of a gradual increase in abuse by an intimate or former partner.<sup>4</sup> Of these victims, 79% were women and girls, with the victimization rate being nearly four times higher for women and girls than for men and boys. Moreover, in a 2019 Canadian self-report survey, nearly 13% of “spousal violence”<sup>5</sup> victims experienced two incidents of abuse, 28% experienced three to ten incidents, and 17% experienced more than ten incidents.<sup>6</sup>

<sup>1</sup> Though not without their limitations, this article will use the terms “family violence” and “intimate partner violence” as currently adopted by Canadian legislation to ensure consistency unless specified otherwise. “IPV” is interpreted as offences committed by an ‘intimate partner’ as defined under section 2 of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*]. “FV” is used as a broader term that encompasses abuse against ‘family members,’ including children, as defined under section 2(1) of the *Divorce Act*, RSC 1985, c 3 (2nd Supp) [*Divorce Act*]. See Part II for more details about why these terms should not be used interchangeably.

<sup>2</sup> Gregory Taylor, “The chief public health officer’s report on the state of public health in Canada, 2016: A focus on family violence in Canada” (2016) at 3, online (pdf): *Government of Canada* <[www.canada.ca/content/dam/canada/public-health/migration/publications/departement-ministere/state-public-health-family-violence-2016-etat-sante-publique-violence-familiale/alt/pdf-eng.pdf](http://www.canada.ca/content/dam/canada/public-health/migration/publications/departement-ministere/state-public-health-family-violence-2016-etat-sante-publique-violence-familiale/alt/pdf-eng.pdf)> [perma.cc/NMS9-MBEJ].

<sup>3</sup> “Victims of police-reported family and intimate partner violence in Canada, 2021” (19 October 2022), online: *Statistics Canada* <[www150.statcan.gc.ca/n1/daily-quotidien/221019/dq221019c-eng.htm](http://www150.statcan.gc.ca/n1/daily-quotidien/221019/dq221019c-eng.htm)> [perma.cc/2DTU-ENQZ] [Statistics Canada]. *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> ‘Spousal violence’ was defined as violence occurring in current or former intimate partner or spousal relationships.

<sup>6</sup> Shana Conroy, “Spousal violence in Canada, 2019” (6 October 2021), online: *Statistics Canada* <[www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00016-eng.htm](http://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00016-eng.htm)> [perma.cc/9ZJ2-BTJ4] [Conroy].

More incidents were also associated with more severe violence. As for the prevalence of the most extreme form of FV, FV-related homicide, there were 154 victims in Canada in 2021, with 60% being women and girls.<sup>7</sup> FV-related homicides in 2021 increased from 153 victims in 2020 and 145 victims in 2019. For IPV-related homicides, there were 77 victims in 2019, 84 in 2020, and 90 in 2021, with 76% of victims being women and girls in 2021.<sup>8</sup> Furthermore, the Department of Justice Canada revealed that the estimated cost of “spousal violence”<sup>9</sup> in 2009 was approximately \$7.4 billion, with nearly 81% of costs being borne by victims (e.g., medical care).<sup>10</sup> What is most concerning is that many FV and IPV cases are unrecognized and underreported for a myriad of reasons (e.g., a belief that victimization will not be taken seriously).<sup>11</sup> A 2019 Canadian self-report survey determined that nearly 80% of spousal victims have not reported the abuse they experienced to the police, with two-thirds having sought informal support, such as speaking to a family member.<sup>12</sup>

Given the seriousness and prevalence of FV and IPV, scholars, activists, and survivors have all struggled to find the best way to address the issue, with many relying on the law for answers. However, addressing FV and IPV through the law continues to be contentious. It first assumes that the law is an effective and desirable method for tackling FV and IPV.<sup>13</sup> Yet, despite several legal reforms in Canada, with one of the most recent in 2019 under Bill C-75,<sup>14</sup> reported FV and IPV cases continue to rise. Nonetheless, legal recourse remains central to policy responses to address FV and IPV, likely because legal reformists continue to see an

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<sup>7</sup> Statistics Canada, *supra* note 3.

<sup>8</sup> *Ibid.*

<sup>9</sup> ‘Spousal violence’ was defined as violence committed by married, common-law, separated, or divorced partners of at least 15 years of age.

<sup>10</sup> Ting Zhang et al, “An Estimation of the Economic Impact of Spousal Violence in Canada, 2009” (2013), online: *Government of Canada* <[www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12\\_7/p6.html#sec61](http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12_7/p6.html#sec61)> [perma.cc/RVH2-6D5T].

<sup>11</sup> See James W Davis et al, “Victims of Domestic Violence on the Trauma Service: Unrecognized and Underreported” (2003) 54:2 J Trauma 352 at 352; Ruth E Fleury et al, “Why Don’t They Just Call the Cops?”: Reasons for Differential Police Contact Among Women with Abusive Partners” (1998) 13:4 Violence Vict 333 at 343.

<sup>12</sup> Conroy, *supra* at note 6.

<sup>13</sup> Courtney K Cross, “Coercive Control and the Limits of Criminal Law” (2002) 56 UC Davis L Rev 195 at 199 [Cross].

<sup>14</sup> *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, SC 2019, c 25.

incongruity between what many victims experience and the current criminal law's approach to addressing the problem.<sup>15</sup> Canada's current policy in criminal law remains incident-led, meaning abusive "incidents" are investigated and prosecuted independently of the other and removed from the larger relationship context in which they arose.<sup>16</sup> This incident-led approach has been argued to "decontextualize" FV and IPV and "conceal the reality of an ongoing pattern of conduct occurring within a relationship characterized by power and control."<sup>17</sup> Recognizing "coercive control" as a form of abuse thus elicits a fundamental shift in understanding FV and IPV by acknowledging that abuse can be a continuous pattern not limited to isolated occurrences.<sup>18</sup> Although there is no universally accepted definition, coercive control is generally understood as the practice of using "threatened consequences of failure to comply with demands (i.e., coercion) and the achievement of the demanded behaviors (i.e., control)."<sup>19</sup>

Since coercive control is not currently captured by criminal law in most jurisdictions, proponents of its criminalization argue that criminal law must expand to reconcile it with the lived experiences of survivors.<sup>20</sup> Thus, several jurisdictions have enacted (or are in the process of enacting) criminal legislation against coercive control. However, the criminalization

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<sup>15</sup> Sandra Walklate, Kate Fitz-Gibbon & Jude McCulloch, "Is More Law the Answer? Seeking Justice for Victims of Intimate Partner Violence Through the Reform of Legal Categories" (2018) 18:1 *Criminol Crim Justice* 115 at 116 [Walklate, Fitz-Gibbon & McCulloch].

<sup>16</sup> Andrea Silverstone, "Coercive Control Brief" (n.d.) at 2, online (pdf): <[www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11112021/br-external/SagesseDomesticViolencePreventionSociety-e.pdf](http://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11112021/br-external/SagesseDomesticViolencePreventionSociety-e.pdf)> [Silverstone]; Jennifer Koshan, Janet Mosher & Wanda Wiegers "COVID-19, the Shadow Pandemic, and Access to Justice for Survivors of Domestic Violence" (2021) 57:3 *Osgoode Hall LJ* 739 at 743-44. [Koshan, Mosher & Wiegers].

<sup>17</sup> Deborah Tuerkheimer, "Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence" (2004) 94:4 *J Crim Law Criminol* 959 at 960-61.

<sup>18</sup> Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (New York: Oxford University Press, 2007) at 5 [Stark].

<sup>19</sup> L Kevin Hamberger, Sadie E Larsen & Amy Lehrner "Coercive Control in Intimate Partner Violence" (2017) 37 *Aggress Violent Behav* 1 at 10 [Hamberger, Larsen & Lehrner].

<sup>20</sup> Stark, *supra* note 18 at 4; McMahon, Marilyn, & Paul McGorry eds, *Criminalising Coercive Control: Family Violence and the Criminal Law* (Singapore: Springer Nature, 2020) at 219-239 [McMahon, & McGorry].

of coercive control has faced significant opposition.<sup>21</sup> Given the limited empirical research examining criminal legislation against coercive control in practice however, it is difficult to draw conclusive inferences about the effectiveness of such legislation. Therefore, this article does not argue that Canada should criminalize coercive control or that it is the most desirable and effective method to address the larger issues of FV and IPV. Instead, given the recent interest in its criminalization, the article simply examines how coercive control could be criminalized in Canada.

Part II examines how FV, IPV, and coercive control are currently defined and theoretically conceptualized in the current literature and Canadian law. Part III examines how Canada has historically addressed FV, IPV, and coercive control and how it does presently in criminal and family law. Part III then surveys criminal legislation against coercive control in other jurisdictions. Part IV conducts a critical legal comparative analysis between the current Canadian legislative framework against coercive control and other jurisdictions examined in Part III to determine how coercive control could be better addressed legislatively in Canada. Finally, while more research is needed to establish its efficacy in practice, Part V cautions against the likelihood that adding a new criminal offence on its own will have a meaningful effect in helping address the broader issue of FV and IPV in Canada. Thus, Part V concludes by offering three recommendations to ensure a coercive control offence has its desired effects.

## II. UNDERSTANDING FAMILY VIOLENCE, INTIMATE PARTNER VIOLENCE, AND COERCIVE CONTROL

### A. Defining Family Violence and Intimate Partner Violence

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<sup>21</sup> Cross, *supra* note 13; Walklate, Fitz-Gibbon, & McCulloch, *supra* note 15; Julia R. Tolmie, “Coercive Control: To Criminalize or Not to Criminalize?” (2017) 18:1 *Criminol Crim Justice* 50; Michele Burman & Oona Brooks-Hay, “Aligning Policy and Law? The Creation of a Domestic Abuse Offence Incorporating Coercive Control” (2018) 18:1 *Criminol Crim Justice* 67; Sandra Walklate & Kate Fitz-Gibbon, “The Criminalisation of Coercive Control: The Power of Law?” (2019) 8:4 *IJCJ&SD* 94; Battered Women’s Justice Project, “Coercive Control Codification: A Brief Guide for Advocates and Coalitions” (November 2021) at 4, online (pdf): [www.bwjp.org/assets/documents/pdfs/cc-codificationbrief.pdf](http://www.bwjp.org/assets/documents/pdfs/cc-codificationbrief.pdf).

The debate over the etiology of FV and IPV has yet to be settled, with many scholars offering differing causal theories. While examining these various theories is beyond the scope of this article, some commonly proposed causes include gendered inequality<sup>22</sup> and a broader multifaceted socio-legal problem of intersectionality.<sup>23</sup> For instance, while women continue to disproportionately report as victims of FV and IPV in Canada,<sup>24</sup> not all women are equally at risk.<sup>25</sup>

The disagreement over the etiology of FV and IPV results partly from inconsistent definitions used across the current literature and law. Scholars, legislators, and activists have used various terms interchangeably to describe the complex phenomenon of FV and IPV, including ‘domestic violence,’ ‘conjugal violence,’ ‘domestic abuse,’ and ‘spousal violence,’ to name a few. However, using these terms interchangeably is problematic as growing research suggests that several types of abuse within the context of personal relationships may exist, which directly affects what behaviours are being captured and who the perpetrators and victims are.<sup>26</sup> For example, in 2008, Kelly and Johnson proposed five types of abuse within intimate partner relationships: (1) coercive controlling violence, (2) violent resistance, (3) situational couple violence, (4) separation-instigated violence, and (5) mutual violent control.<sup>27</sup> Coercive controlling violence, labelled initially as

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<sup>22</sup> See e.g., Stark, *supra* note 18 at 5.

<sup>23</sup> See e.g., Kimberlé W Crenshaw, “From Private Violence to Mass Incarceration: Thinking Intersectionally about Women, Race, and Social Control” (2012) 59:6 UCLA L Rev 1418 at 1452–57.

<sup>24</sup> Statistics Canada, *supra* note 3.

<sup>25</sup> Conroy, *supra* note 6.

<sup>26</sup> Jane Wangmann, “Different Types of Intimate Partner Violence: An Exploration of the Literature” (2011) at 2, online (pdf): <opus.lib.uts.edu.au/bitstream/10453/19466/1/2010006199OK.pdf> [perma.cc/8MAL-CUXR] [Wangmann].

<sup>27</sup> Joan B Kelly & Michael P Johnson, “Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions” (2008) 46:3 Fam Court Rev 476 at 477 [Kelly & Johnson].

“patriarchal terrorism”<sup>28</sup> and “intimate terrorism,”<sup>29</sup> involves a “pattern of emotionally abusive intimidation, coercion, and control coupled with physical violence.”<sup>30</sup> Violent resistance is described as violence used by victims to resist coercive controlling violence.<sup>31</sup> Situational couple violence, initially labelled “common couple violence,”<sup>32</sup> involves violence triggered by a particular conflict or situation rather than control.<sup>33</sup> Separation-instigated violence is violence that first occurs at separation, which is distinct from other forms of violence that start within the context of a relationship but continue post-separation.<sup>34</sup> Finally, mutual violent control involves both partners attempting to exert coercive controlling violence.<sup>35</sup> This growing body of research has led Johnson to conclude that “it is no longer scientifically or ethically acceptable to speak of domestic violence without specifying, loudly and clearly, the type of violence to which we refer.”<sup>36</sup>

The problem of using inconsistent terminology is also evident in Canadian law. Under criminal law, the *Criminal Code* has no specific FV or IPV offence or definition, but they are implicitly understood as committing offences that already exist in the *Criminal Code* against an intimate partner or the victim’s or offender’s family.<sup>37</sup> While “intimate partner” is defined under section 2 of the *Criminal Code* as “a current or former spouse, common-law partner, and dating partner,” members of a victim’s or offender’s family is not. Although Crown counsel manuals are intended to provide additional guidance for prosecutors, they offer

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<sup>28</sup> Michael P Johnson, “Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women” (1995) 57:2 J Marriage Fam 283 at 284 [Johnson].

<sup>29</sup> Michael P Johnson, *A Typology of Domestic Violence, Intimate Terrorism, Violent Resistance, And Situational Couple Violence* (Boston: Northeastern University Press, 2008).

<sup>30</sup> Kelly & Johnson, *supra* note 27 at 478.

<sup>31</sup> *Ibid* at 479.

<sup>32</sup> Johnson, *supra* note 28 at 285.

<sup>33</sup> Kelly & Johnson, *supra* note 27 at 479.

<sup>34</sup> *Ibid* at 479-480.

<sup>35</sup> *Ibid* at 477.

<sup>36</sup> Michael P Johnson, “Domestic Violence: It’s Not About Gender – or is it” (2005), 67:5 J Marriage Fam 1126 at 1126.

<sup>37</sup> See e.g., *Criminal Code*, *supra* note 1 at s. 718.2(a)(ii) (several of these offences include assaults (ss. 265-268), sexual assaults (ss. 271-273), criminal harassment (s. 264), kidnapping and forcible confinement (s. 279), uttering threats (s. 264.1), and homicide (s. 231-235), to name a few).

inconsistent definitions and terminology. For instance, the Public Prosecution Service of Canada defines “domestic violence” as “physical or sexual assault, or threat of such violence, against an intimate partner.”<sup>38</sup> Conversely, British Columbia’s Crown Counsel Policy Manual uses the term “IPV” and defines it much more broadly:

An offence involving physical or sexual assault, or the threat of physical or sexual assault, against an intimate partner. An offence other than physical or sexual assault, such as criminal harassment, threatening, publication of intimate images without consent, or mischief, where there are reasonable grounds to believe the offence was carried out in order to cause or did in fact cause fear, trauma, suffering, or loss to an intimate partner. An offence where the intimate partner is the target though not the direct victim of the criminal action of the accused, for example, where the accused has committed an offence against someone or something important to the intimate partner such as an assault on the intimate partner’s child or new partner. Circumstances relating to the above which warrant an application for a section 810 recognizance. An offence for a breach of the following court orders relating to the above circumstances: bail, probation, or conditional sentence orders made on “K” files, restraining orders made under the former *Family Relations Act*, protection orders made under the *Family Law Act*, recognizances made under section 810.<sup>39</sup>

In contrast, under family law, a broader “family violence” term is used at the federal level in the *Divorce Act*, which it defines under section 2(1) as:

Any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person – and in the case of a child, the direct or indirect exposure to such conduct.

FV extends to “family members” under this Act, which it describes under section 2(1) as “a member of the household of a child of the marriage

<sup>38</sup> “Domestic Violence: Guideline of the Director issued under Section 3(3)(C) of the Director of Public Prosecutions Act” (31 January 2022) at 477, online (pdf): *Public Prosecution Service of Canada* <[www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpd/fps-sfp/tpd/p5/ch05.html](http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpd/fps-sfp/tpd/p5/ch05.html)> [perma.cc/3L6L-WL68].

<sup>39</sup> “Crown Counsel Policy Manual” (2022) at 2, online (pdf): *British Columbia Prosecution Service* <[www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/ipv-1.pdf](http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/ipv-1.pdf)> [perma.cc/U5X5-AQMP].



or a spouse or former spouse as well as a dating partner of a spouse or former spouse who participates in the activities of the household.”

Moreover, seven provinces and all three territories have specific civil legislation addressing FV or IPV, but they use various terms to describe them.<sup>40</sup> Only a few provinces brought their legislation in line with the new federal *Divorce Act* FV definition.<sup>41</sup>

In sum, while meaningful gains have occurred in our overall understanding of FV and IPV, there is a lack of consistent definitions in the current literature and Canadian law. The inconsistency in defining these constructs must be resolved to properly understand what behaviours are being captured and who the perpetrators and victims are. Ensuring proper diligence when operationalizing these terms will also allow for a better understanding of how coercive control fits within them to ensure criminal legislation against it has its desired effect.

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<sup>40</sup> Alberta: *Protection Against Family Violence Act*, RSA 2000, c P-27; Manitoba: *Domestic Violence and Stalking Act*, CCSM, c D93; New Brunswick: *Intimate Partner Violence Intervention Act*, SNB 2017, c 5; Newfoundland and Labrador: *Family Violence Protection Act*, SNL 2005, c F-3.1; Northwest Territories: *Protection Against Family Violence Act*, SNWT 2003, c 24; Nova Scotia: *Domestic Violence Intervention Act*, SNS 2001, c 29; Nunavut: *Family Abuse Intervention Act*, SNU 2006, c 18; Prince Edward Island: *Victims of Family Violence Act*, RSPEI 1988, c V-3.2; Saskatchewan: *Victims of Interpersonal Violence Act*, SS 1994, c V-6.02; Yukon: *Family Violence Prevention Act*, RSY 2002, c 84. See also Jennifer Koshan, Janet E Mosher & Wanda A Wieggers, “Domestic Violence and Access to Justice: A Mapping of Relevant Laws, Policies and Justice System Components Across Canada, 2020 CanLIIDocs 3160” (2022), online (pdf): *Canadian Legal Information Institute* <[canlii.ca/t/szxl](https://canlii.ca/t/szxl)> [perma.cc/C2BT-YKTX] (provides a detailed “survey of legislation, key government policies, and justice system components that apply to ‘domestic violence’ across Canada” at 1).

<sup>41</sup> See e.g., Saskatchewan: *Children’s Law Act*, SS 2020, c 2 and Ontario: *Children’s Law Reform Act*, RSO 1990, c C.12; New Brunswick: *Family Law Act*, SNB 2020, c 23. Note that other legislation has adopted differing terminology and definitions as well, including the recently amended *Firearms Act*, SC 1995, c 39, which added section 70.1(2): “For the purpose of subsection (1), domestic violence means conduct, whether or not it constitutes a criminal offence, by a family member towards another family member, including conduct by or towards an intimate partner, that is violent or threatening or that is part of a pattern of coercive and controlling behaviour or that causes that other family member or intimate partner to fear for their safety or the safety of another person.”

## B. Defining Coercive Control

The concept of coercive control as a form of abuse has only recently been recognized. One of the first proposed mechanisms to explain how IPV transpires was in 1979 by Lenore Walker and her “cycle of violence,” which involves cycling patterns in intimate partner relationships consisting of three distinct phases: (1) calm, (2) tension building/incident, and (3) honeymoon/reconciliation.<sup>42</sup> Walker argued that a period of a close relationship eventually transforms into tension resulting from daily life stressors. Once sufficient tension builds up, the abusive incident occurs. The honeymoon phase follows when the perpetrator attempts to reunite with the abused partner as the tension decreases over time. However, the tension inevitably builds up again, and the cycle repeats. Walker’s theory has been criticized for its oversimplification,<sup>43</sup> including for being victim blaming by using terms like “battered women syndrome” and “learned helplessness” to explain a victim’s decision not to leave an abusive partner.<sup>44</sup>

It was not until the late twentieth century that other proposed models of IPV shifted instead toward examining perpetrators’ behaviours, particularly the use of coercive control.<sup>45</sup> Evan Stark, a prominent researcher in the field, posits that perpetrators engage in abuse through coercive control by controlling victims’ freedom and autonomy and instilling fear of punishment through coercion if they do not comply with the perpetrator’s demands.<sup>46</sup> He defines coercion as “the use of force or threats to compel or dispel a particular response.”<sup>47</sup> Conversely, control is described as

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<sup>42</sup> Bonnie S Fisher & Steven P Lab, *Encyclopedia of Victimology and Crime Prevention* (SAGE Publications, 2010) at 257 [Fisher & Lab].

<sup>43</sup> See e.g., Rebecca Hoffmann Frances, “The Cycle of Violence: Why It Is No Longer Widely Used to Understand Domestic Violence” (2021) at 2, online (pdf): *Futures Without Violence* <promising.futureswithoutviolence.org/wp-content/uploads/2022/10/Cycle-of-Violence-Fact-Sheet10-4.pdf> [Hoffmann Frances].

<sup>44</sup> Fisher & Lab, *supra* note 42 at 258.

<sup>45</sup> Hoffmann Frances, *supra* note 43 at 3-4; Evan Stark, “Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control” (1995) 58:4 Alb L Rev 973 at 975-6; Ellen Pence & Michael Paymar, *Education Groups for Men Who Batter: The Duluth Model* (New York: Springer, 1993). See also Stark, *supra* note 18 at 200-03 (Stark provides a brief history of the evolution of the understanding of coercive control as a form of abuse from the 1950s onward).

<sup>46</sup> Stark, *supra* note 18 at 5.

<sup>47</sup> *Ibid* at 228.

“structural forms of deprivation, exploitation, and command that compel obedience indirectly by monopolizing vital resources, dictating preferred choices, microregulating a partner’s behaviour, limiting her options, and depriving her of supports needed to exercise independent judgment.”<sup>48</sup> According to Stark, coercive control results in a state of “entrapment”<sup>49</sup> because “its key dynamic involves an objective state of subordination and the resistance women mount to free themselves from domination.”<sup>50</sup> Thus, according to Stark’s theory, coercive control is an ongoing form of abuse that makes leaving abusers difficult because the offender is controlling the victim’s everyday behaviours and threatens to use force if the victim does not follow the commands.

While Stark’s understanding of coercive control has been widely recognized,<sup>51</sup> there is still inconsistency in the literature regarding coercive control’s definition and how it should be conceptualized.<sup>52</sup> For example, crucial to Stark’s original conceptualization of coercive control is its use by men against their female partners to maintain gender inequality and restore

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<sup>48</sup> *Ibid* at 229.

<sup>49</sup> *Ibid*.

<sup>50</sup> *Ibid* at 5.

<sup>51</sup> See Tamara L Kuennen “Analyzing the Impact of Coercion on Domestic Violence Victims” (2007) 22:1 Berkeley J Gender, L, & Just 2; Gretchen Arnold, “A Battered Women’s Movement Perspective of Coercive Control” (2009) 15:12 Violence Against Women 1432; Kristin L Anderson, “Gendering Coercive Control” (2009) 15:12 Violence Against Women 1444; Cheryl Hanna, “The Paradox of Progress: Translating Evan Stark’s Coercive Control into Legal Doctrine For Abused Women” (2009) 15:12 Violence Against Women 1458; Connie J A Beck & Chitra Raghavan “Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control” (2010) 48:3 Family Court Review 555; Marieh Tanha et al, “Sex Differences in Intimate Partner Violence and the Use of Coercive Control as a Motivational Factor for Intimate Partner Violence” (2010) 25:10 J Interpers Violence 1836; Kimberly A Crossman, Jennifer L Hardesty, & Marcela Raffaelli, “He Could Scare Me Without Laying a Hand on Me”: Mothers’ Experiences of Nonviolent Coercive Control During Marriage and After Separation” (2016) 22:4 Violence Against Women 454; Jennifer L Hardesty et al, “Toward a Standard Approach to Operationalizing Coercive Control and Classifying Violence Types” (2015) 77:4 J Marriage Fam 833; Marianne Hester et al, “Is it Coercive Controlling Violence? A Cross-Sectional Domestic Violence and Abuse Survey of Men Attending General Practice in England” (2017) 7:3 Psychology of Violence 417; Tolmie, *supra* note 21; Erin Sheley, “Criminalizing Coercive Control Within the Limits of Due Process” (2021) 70 Duke LJ 1321; Cross *Supra* note 13 at 207.

<sup>52</sup> Hamberger, Larsen & Lehrner, *supra* note 19 at 1-3.

patriarchy in the relationship.<sup>53</sup> As such, some have questioned whether women and members of the LGBTQ+ community can also exert coercive control.<sup>54</sup> Conversely, others have maintained that “not all coercive control [is] rooted in patriarchal structures and attitudes, nor perpetrated exclusively by men.”<sup>55</sup> Moreover, Johnson and colleagues’ conceptualization of “coercive controlling violence” discussed above is said to occur alongside physical violence,<sup>56</sup> whereas Stark has emphasized that its use can and does occur without physical violence.<sup>57</sup> Others have also questioned the use of the term “coercive control” itself and instead argue for reconceptualizing the concept as a “domestic violent crime.”<sup>58</sup> Dutton and Goodman have also proposed their own theoretical “model of coercion,”<sup>59</sup> which involves six key elements, with an emphasis on coercion’s role in fostering abuse: (1) social ecology; (2) setting the stage; (3) coercion involving a demand and a credible threat for noncompliance; (4) surveillance; (5) delivery of threatened consequences; and (6) the victim’s behavioural and emotional response to coercion. They argue that coercion begins with the perpetrator “setting the stage” for coercion in four ways: (1) creating the expectancy for negative consequences, (2) creating or exploiting the partner’s vulnerabilities, (3) wearing down the partner’s resistance, and (4) facilitating dependency.<sup>60</sup> This process is said to create vulnerability in the victim, which in turn allows coercion to occur by linking a demand with a credible threatened negative consequence for non-compliance and controlling various aspects of a victim’s life.<sup>61</sup> Dutton and Goodman assert that these

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<sup>53</sup> Stark, *supra* note 18 at 5.

<sup>54</sup> Evan Stark & Marianne Hester, “Coercive Control: Update and Review” (2019) 25:1 *Violence against Women* 81 at 91-94 [Stark & Hester].

<sup>55</sup> Kelly & Johnson, *supra* note 27 at 478-479. See also Michael P Johnson, “Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence” (2006) 12:11 *Violence Against Women* 1003 at 1015.

<sup>56</sup> Kelly & Johnson, *ibid* at 478.

<sup>57</sup> Stark, *supra* note 18 at 4; Stark & Hester, *supra* note 53 at 89-91. See also Wangmann, *supra* note 26 at 13.

<sup>58</sup> Sylvia Walby & Jude Towers, “Untangling the Concept of Coercive Control: Theorizing Domestic Violent Crime” (2018) 18:1 *Criminol Crim Justice* 7.

<sup>59</sup> Mary Ann Dutton & Lisa A Goodman, “Coercion in Intimate Partner Violence: Toward a New Conceptualization” (2005) 52:11 *Sex Roles* 743 at 746.

<sup>60</sup> *Ibid* at 748.

<sup>61</sup> *Ibid* at 747.

elements transpire into “spiralling and overlapping sequences to establish an overall situation of coercive control.”<sup>62</sup>

With differing definitions and theoretical conceptualizations, researchers have attempted to develop measuring tools to identify coercive control’s key constructs and standardize the operationalization of the term. However, a 2017 comprehensive literature review examining such tools revealed that there is currently no agreement on how to define and measure coercive control.<sup>63</sup> Nonetheless, the authors’ review revealed at least three common facets of coercive control: (1) intentionality or goal orientation in the abuser, (2) a negative perception of the controlling behaviour by the victim, and (3) the ability of the abuser to obtain control through the deployment of a credible threat.<sup>64</sup> Though the authors recognize that this multifaceted definition is not without its challenges, they assert that it at least provides the opportunity for uniformity. Thus, the authors argue that “the accurate assessment of coercive control should include an evaluation of threatened consequences of failure to comply with demands (i.e., coercion), and the achievement of the demanded behaviors (i.e., control).”<sup>65</sup> Furthermore, they suggest that a more precise understanding requires examining “not only the presence but also the chronicity and pervasiveness of coercive control” in addition to “the context in which potentially coercive behaviors take place, and ideally that take a relationship history perspective.”<sup>66</sup>

In sum, since the late twentieth century, there has been growing interest in understanding perpetrators’ behaviours to explain IPV, particularly the use of coercive control. Research on coercive control highlights the importance of examining the larger relationship context in which the abuse occurs to recognize an often-ongoing pattern of abuse rather than simply looking at abusive incidents in isolation. However, despite the extensive literature on coercive control, broad conclusions that can be drawn are limited, given the use of varying definitions and theoretical frameworks. Fortunately, recent developments have attempted to identify coercive control’s key constructs to standardize the operationalization of the term. Legislators should rely on this emerging empirical literature to ensure they

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<sup>62</sup> *Ibid* at 743.

<sup>63</sup> Hamberger, Larsen & Lehrner, *supra* note 19 at 3-9.

<sup>64</sup> *Ibid* at 9.

<sup>65</sup> *Ibid* at 10.

<sup>66</sup> *Ibid*.

know how to properly define the offence and what behaviours should be captured by it.

### III. THE CRIMINALIZATION OF COERCIVE CONTROL

#### A. Canadian Legislation Against Coercive Control

##### 1. *Historical Approach*

Historically, Canada's legal system hesitated to intervene in what was considered a private matter in FV and IPV cases.<sup>67</sup> As such, courts were reluctant to find ways to address the issue, and judges would impose lenient sentences to ensure the offender's conviction would not violate the "sanctity of the family."<sup>68</sup> However, by the late twentieth century, a significant shift in attitude towards FV and IPV occurred following the rise of feminist complaints about the legal system's failure to address what had arguably been a gendered form of abuse.<sup>69</sup> The increased awareness of the seriousness of FV and IPV became more prominent when pro-charging and prosecution policies were implemented in all provinces and territories in Canada in the mid-1980s.<sup>70</sup> Moreover, Parliament began legislating amendments to the *Criminal Code*, such as making sexual assault against one's spouse a criminal offence<sup>71</sup> and making violence against an "intimate partner" an aggravating factor during sentencing.<sup>72</sup> Consequently, by the late twentieth century, FV and IPV became firmly established legal matters in Canada.

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<sup>67</sup> "Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation" (last modified 8 December 2012) at 1, online (pdf): *Department of Justice Canada* <[www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/pol/spo\\_e-con\\_a.pdf](http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/pol/spo_e-con_a.pdf)> [perma.cc/97T9-TLNW] [Department of Justice Canada].

<sup>68</sup> Isabel Grant, "Sentencing for Intimate Partner Violence in Canada: Has s.718.2(a)(ii) Made a Difference?" (2017) at 8, online (pdf): *Department of Justice Canada* <[www.publications.gc.ca/collections/collection\\_2018/jus/J4-50-2017-eng.pdf](http://www.publications.gc.ca/collections/collection_2018/jus/J4-50-2017-eng.pdf)> [Grant].

<sup>69</sup> *Ibid.*

<sup>70</sup> Department of Justice Canada, *supra* note 67 at 9-10.

<sup>71</sup> Melanie Randall, "Sexual Assault in Spousal Relationships, Continuous Consent, and the Law: Honest but Mistaken Judicial Beliefs" (2008) 32:2 *Man LJ* 144 at 147.

<sup>72</sup> Grant, *supra* note 68 at 9.

## 2. *Current Criminal Law Approach*

As mentioned in Part II, the Canadian *Criminal Code* does not have a specific FV or IPV offence. Rather, the current criminal law approach to addressing them involves supplementing existing criminal offences with bail and sentencing provisions specific to these cases<sup>73</sup> and a *Criminal Code* section 2 definition of an “intimate partner.” Canada also does not have criminal legislation against coercive control, but Parliament is not foreign to the concept. Bill C-247 was proposed in the House of Commons in 2020 to make “controlling or coercive conduct” a criminal offence under section 264.01(1):

Everyone commits an offence who repeatedly or continuously engages in controlling or coercive conduct towards a person with whom they are connected that they know or ought to know could, in all the circumstances, reasonably be expected to have a significant impact on that person and that has such an impact on that person [emphasis added].<sup>74</sup>

Under subsection (1), two persons are “connected” if they are:

- (a) current spouses, common-law partners or dating partners, or have agreed to marry each other;
- (b) they are members of the same household, and
  - (i) are former spouses, common-law partners or dating partners,
  - (ii) have agreed to marry each other, whether or not the agreement has been terminated,
  - (iii) are relatives, or
  - (iv) carry out, or have carried out, parental responsibilities in respect of the same child, that child being under the age of 18 years.

As for the conduct’s effect, a “significant impact” on a person is present if:

- (a) it causes the person to fear, on reasonable grounds, on more than one occasion, that violence will be used against them;
- (b) it causes the person’s physical or mental health to decline; or
- (c) it causes the person alarm or distress that has a substantial adverse effect on their day-to-day activities, including:
  - (i) limits on their ability to safeguard their well-being or that of their children,
  - (ii) changes in or restrictions on their social activities or their communication with others,

<sup>73</sup> See e.g., *Criminal Code*, *supra* note 1 at s 718.2(a)(ii) and s 515(3)(a).

<sup>74</sup> Bill C-247, *An Act to Amend the Criminal Code (Controlling or Coercive Conduct)*, 2nd Sess, 43rd Parl, 2020 (first reading 5 October 2020).

- (iii) absences from work or from education or training programs or changes in their routines or status in relation to their employment or education, and
- (iv) changes of address.

The offence was designed as a hybrid offence punishable by summary conviction or a term of imprisonment not exceeding five years upon indictment. However, the bill never reached its second reading, as the federal government called an election in 2021. After the election, the offence was re-introduced as Bill C-202<sup>75</sup> and underwent its first reading in the House of Commons in November 2021. The offence was then re-introduced a third time in May 2023 as Bill C-332<sup>76</sup> when it underwent its first reading in the House of Commons. As of this writing, coercive control has yet to be officially criminalized in Canada.

While Parliament's recognition of coercive control in Canadian criminal law can be seen as monumental, some have highlighted important shortcomings with the criminal bills, including the following to name a few: (1) the offence is limited to present partners living together, (2) the offence is not explicitly addressing children living in a home with coercive control as victims, (3) "controlling or coercive conduct" is defined so vaguely, thus rendering it unhelpful, (4) the offence does not include coercive control by electronic means, (5) the offence might be misused and have a greater negative effect on victims and already vulnerable groups, and (6) the offence does not address the mistrust that victims have with regards to how the legal system handles cases involving FV, IPV, and sexual violence, given that it does not come with corresponding training of legal practitioners.<sup>77</sup>

### ***3. Current Family Law Approach***

Although criminal law in Canada has yet to address coercive control, Parliament has recognized it as a form of abuse at a national level in family

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<sup>75</sup> Bill C-202, *An Act to Amend the Criminal Code (Controlling or Coercive Conduct)*, 1st Sess, 44th Parl, 2021 (first reading 25 November 2021).

<sup>76</sup> Bill C-332, *An Act to Amend the Criminal Code (Controlling or Coercive Conduct)*, 1st Sess, 44th Parl, 2021 (first reading 18 May 2023).

<sup>77</sup> See generally Allana Haist, "Criminalizing Coercive Control in Canada: The Implications for Family Law" (2021) at 60-71, online (pdf): Luke's Place <[lukesplace.ca/wp-content/uploads/2022/03/Stopping-Coercive-Control-by-Criminalization-Lukes-Place.pdf](http://lukesplace.ca/wp-content/uploads/2022/03/Stopping-Coercive-Control-by-Criminalization-Lukes-Place.pdf)> [Haist].



law. The *Divorce Act* was amended in 2019 to include a definition of “family violence,” which is defined under section 2(1) as:

Any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person – and in the case of a child, the direct or indirect exposure to such conduct. [emphasis added].

However, the *Divorce Act* does not define what “coercive and controlling behaviour” actually is. Nevertheless, the FV definition acknowledges that FV can take many forms and provides a non-exhaustive list of behaviours that would fall within it, including:

- (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
- (b) sexual abuse;
- (c) threats to kill or cause bodily harm to any person;
- (d) harassment, including stalking;
- (e) the failure to provide the necessities of life;
- (f) psychological abuse;
- (g) financial abuse;
- (h) threats to kill or harm an animal or damage property; and
- (i) the killing or harming of an animal or the damaging of property.

## B. Criminal Legislation Against Coercive Control in Other Jurisdictions

### 1. *Stand-Alone Coercive Control Offences*

#### *England and Wales*

In 2015, the *Serious Crime Act 2015*<sup>78</sup> was enacted, and England and Wales became the first jurisdictions to officially criminalize “coercive or controlling behaviour” under section 76:

- (1) A person (A) commits an offence if –
  - (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
  - (b) at the time of the behaviour, A and B are personally connected,
  - (c) the behaviour has a serious effect on B, and

<sup>78</sup> *Serious Crime Act 2015* (England and Wales), 2015.

- (d) A knows or ought to know that the behaviour will have a serious effect on B.
- (2) A and B are “personally connected” if—
  - (a) A is in an intimate personal relationship with B, or
  - (b) A and B live together and—
    - (i) they are members of the same family, or
    - (ii) they have previously been in an intimate personal relationship with each other.
- (3) But A does not commit an offence under this section if at the time of the behaviour in question—
  - (a) A has responsibility for B, for the purposes of Part 1 of the Children and Young Persons Act 1933 (see section 17 of that Act), and
  - (b) B is under 16.
- (4) A's behaviour has a “serious effect” on B if—
  - (a) it causes B to fear, on at least two occasions, that violence will be used against B, or
  - (b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities [emphasis added].

Section 76 was enacted as a hybrid offence. Upon indictment, a person found guilty is sentenced to imprisonment not exceeding five years and/or a fine, or on summary conviction, to imprisonment for a term not exceeding 12 months and/or a fine.<sup>79</sup>

Although the offence applies to both intimate partners and family members, a concern raised when the law was first enacted was that it did not apply to those not living together.<sup>80</sup> With growing criticism, England and Wales replaced the section 76(2) definition of “personally connected” with the definition in Part 1 of the *Domestic Abuse Act 2021*.<sup>81</sup> This new definition removed the cohabitation requirement, thus “ensuring that post-separation abuse and familial domestic abuse is provided for when the victim and perpetrator do not live together.”<sup>82</sup> Furthermore, section 1 of the

<sup>79</sup> *Ibid*, s. 76(11).

<sup>80</sup> Carmen Gill & Mary Aspinall, “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)” (2021) at 6, online (pdf): *House of Commons* <[www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11085796/br-external/jointly1-e.pdf](http://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11085796/br-external/jointly1-e.pdf)> [perma.cc/6B98-H759] [Gill & Aspinall].

<sup>81</sup> *Domestic Abuse Act 2021* (England and Wales), 2021, s 2.

<sup>82</sup> Home Office, “Amendment to the controlling or coercive behaviour offence” (11 July 2022), online: *UK Government* <[www.gov.uk/government/publications/domestic-](http://www.gov.uk/government/publications/domestic-)

*Domestic Abuse Act 2021* provides a new “domestic abuse” definition in law to complement the coercive control offence and help clarify that coercive control is a form of abuse that falls within the umbrella term of “domestic abuse” used in the U.K.

While section 76 does not define behaviour that is “controlling or coercive,” the U.K. Home Office provides statutory guidance containing a list of behaviours that fall within the offence, including controlling or monitoring the victim's daily activities, using acts of coercion or force to persuade the victim to do something that they are unwilling to do, and isolating the victim from friends and family, to name a few.<sup>83</sup>

The U.K. Office for National Statistics has been tracking rates of coercive control since England and Wales first criminalized it in 2015. For example, in 2016-2017, 4,246 cases of coercive control were recorded by the police.<sup>84</sup> In 2021-2022, the number increased nearly tenfold to 41,626.<sup>85</sup> As for prosecutions, the number increased from 309 cases in 2016-2017 to 1,208 cases in 2019-2020.<sup>86</sup> The increase in coercive control offences has been attributed not to a higher prevalence over time but improvements made by the police to recognize coercive controlling behaviours and amendments to the coercive control offence.<sup>87</sup> However, only a small portion of these cases still come to the attention of the criminal justice system or are recorded as cases involving coercive and controlling behaviour.<sup>88</sup> Moreover, there are policing and prosecutorial challenges that

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abuse-bill-2020-factsheets/amendment-to-the-controlling-or-coercive-behaviour-offence> [Home Office].

<sup>83</sup> Controlling or Coercive Behaviour Statutory Guidance Framework (5 April 2023), online (pdf) at 15-16: *Home Office* <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/1148945/Controlling\_or\_Coercive\_Behaviour\_Statutory\_Guidance\_-\_final.pdf>.

<sup>84</sup> “Review of the controlling or coercive behaviour offence” (10 May 2021), online: *Office for National Statistics* <www.gov.uk/government/publications/review-of-the-controlling-or-coercive-behaviour-offence/review-of-the-controlling-or-coercive-behaviour-offence> [Office for National Statistics].

<sup>85</sup> Meghan Elkin, “Domestic abuse prevalence and trends, England and Wales: year ending March 2022” (25 November 2022), online: *Office for National Statistics* <www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseprevalenceandtrendsenglandandwales/yearendingmarch2022> [Elkin].

<sup>86</sup> Home Office, *supra* note 82.

<sup>87</sup> Elkin, *supra* note 85.

<sup>88</sup> Office for National Statistics, *supra* note 84.

need to be addressed. The U.K. Office for National Statistics noted that in 2018-2019, 85% of cases had failed due to evidential difficulties.<sup>89</sup> For example, of the 24,856 police-recorded cases of coercive control in 2019-2020,<sup>90</sup> only 1,208 cases were prosecuted.<sup>91</sup> Furthermore, in 2019, of the 584 defendants being prosecuted, only 293 were convicted and sentenced where coercive control was the principal offence.<sup>92</sup> These governmental findings are consistent with academic research. One study found that of the 5,230 recorded crimes of “domestic abuse”<sup>93</sup> by one police department in the South of England in 2017, only 93 (1.8%) of cases were recorded as coercive control.<sup>94</sup> The authors found that police especially missed evidence of coercive and controlling behaviours in recorded cases involving bodily harm. Similarly, another study found that police in England were not enforcing the coercive control offence frequently and found it challenging to collect evidence of coercion and control.<sup>95</sup> These findings led the authors to conclude that “coercive control crimes face greater procedural challenges and are far less likely to result in prosecution than domestic abuse crimes in general.”<sup>96</sup>

Another commonly cited shortcoming of section 76 is its gender-neutral wording.<sup>97</sup> Of the 584 defendants prosecuted for coercive control in 2019

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<sup>89</sup> *Ibid.*

<sup>90</sup> Meghan Elkin, “Domestic abuse prevalence and trends, England and Wales: year ending March 2021” (24 November 2021), online: *Office for National Statistics* <[www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseprevalenceandtrendsenglandandwales/yearendingmarch2021](http://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseprevalenceandtrendsenglandandwales/yearendingmarch2021)> [perma.cc/5WQA-MV8V].

<sup>91</sup> Home Office, *supra* note 82.

<sup>92</sup> Nick Stripe, “Domestic abuse and the criminal justice system, England and Wales: November 2020” (25 November 2020), online: *Office for National Statistics* <[www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseandthecriminaljusticesystemenglandandwales/november2020](http://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseandthecriminaljusticesystemenglandandwales/november2020)> [perma.cc/8WF7-HKYT] [Stripe].

<sup>93</sup> ‘Domestic abuse’ was not defined and used interchangeably with ‘IPV.’

<sup>94</sup> Charlotte Barlow & Sandra Walklate, “Gender, Risk Assessment and Coercive Control: Contradictions in Terms?” (2021) 61:4 *Brit J of Crim* 887 at 893 [Barlow & Walklate].

<sup>95</sup> Iain Brennan & Andy Myhill, “Coercive Control: Patterns in Crimes, Arrests and Outcomes for a New Domestic Abuse Offence” (2022) 62:2 *Brit J Crim* 468 at 479 [Brennan & Myhill].

<sup>96</sup> *Ibid* at 468.

<sup>97</sup> Barlow & Walklate *supra* note 94 at 887.

in England and Wales, 97% were male, where the gender was known.<sup>98</sup> Similarly, an analysis conducted with Merseyside Police in England in 2017 found that of the 156 coercive control cases examined, 95% of victims were women, and 74% of perpetrators were men.<sup>99</sup> Yet another study found that of the 93 recorded coercive control cases by a police department in South England in 2017, 89 (96%) of the victims were women, and 86 (92.5%) of the perpetrators were men.<sup>100</sup>

### *Republic of Ireland*

In 2018, the Republic of Ireland also introduced criminal legislation against coercive control under section 1 of the *Domestic Violence Act 2018*:<sup>101</sup>

- (1) A person commits an offence where he or she knowingly and persistently engages in behaviour that—
  - (a) is controlling or coercive,
  - (b) has a serious effect on a relevant person, and
  - (c) a reasonable person would consider likely to have a serious effect on a relevant person.
- (2) For the purposes of subsection (1), a person's behaviour has a serious effect on a relevant person if the behaviour causes the relevant person—
  - (a) to fear that violence will be used against him or her, or
  - (b) serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities [emphasis added].

While the maximum penalty is similar to that of the England and Wales offence, there are important distinctions to the offence itself. Unlike the England and Wales offence, section 1(c) of the Republic of Ireland offence focuses on what a “reasonable person” would consider likely to seriously affect a person. Moreover, subsection 4 defines a “relevant person” as only a current or former partner and does not extend to family members. The offence also does not require the behaviour to be “repeated or continuous” but rather be “persistent.”

One significant disadvantage to the offence is that it does not provide a detailed definition of “controlling or coercive” behaviour. Nevertheless, by December 2022, Ireland's national police department recorded over

<sup>98</sup> Stripe, *supra* note 92.

<sup>99</sup> Charlotte Barlow et al, “Police Responses to Coercive Control” (2018) at 3, online (pdf): N8 Policing Research Partnership <documents.manchester.ac.uk/display.aspx?DocID=56477> [perma.cc/8DLK-59L2].

<sup>100</sup> Barlow & Walklate, *supra* note 94 at 893.

<sup>101</sup> *Domestic Violence Act 2018* (Ireland), 2018.

49,257 “domestic abuse”<sup>102</sup> reports, with 481 recorded incidents of coercive control.<sup>103</sup>

### *Australia: New South Wales*

New South Wales became the first state in Australia to specifically criminalize coercive control under the *Crimes Legislation Amendment (Coercive Control) Act 2022*,<sup>104</sup> and Queensland announced plans to introduce a stand-alone offence against coercive control in 2023.<sup>105</sup> The *Crimes Legislation Amendment (Coercive Control) Act 2022* makes several amendments to existing Acts. Under section 54D of the *Crimes Act 1900 No 40*, coercive control has a maximum penalty of seven years imprisonment and is defined as:

- (1) An adult commits an offence if—
  - (a) the adult engages in a course of conduct against another person that consists of abusive behaviour, and
  - (b) the adult and other person are or were intimate partners, and
  - (c) the adult intends the course of conduct to coerce or control the other person, and
  - (d) a reasonable person would consider the course of conduct would be likely, in all the circumstances, to cause any or all of the following, whether or not the fear or impact is in fact caused—
    - (i) fear that violence will be used against the other person or another person, or
    - (ii) a serious adverse impact on the capacity of the other person to engage in some or all of the person’s ordinary day-to-day activities.
- (2) For subsection (1)(a)—
  - (a) the course of conduct may be constituted by any combination of abusive behaviours, and
  - (b) whether the course of conduct consists of abusive behaviour must

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<sup>102</sup> ‘Domestic abuse’ was left undefined.

<sup>103</sup> “An Garda Síochána continues to see an increase in Domestic, Sexual and Gender Based Violence Incidents” (9 December 2022), online: *An Garda Síochána* <[www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2022/december/an-garda-siochana-continues-to-see-an-increase-in-domestic-sexual-and-gender-based-violence-incidents-9th-december-2022.html](http://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2022/december/an-garda-siochana-continues-to-see-an-increase-in-domestic-sexual-and-gender-based-violence-incidents-9th-december-2022.html)> [perma.cc/ML8P-TTTN].

<sup>104</sup> *Crimes Legislation Amendment (Coercive Control) Act 2022*, (NSW), 2022.

<sup>105</sup> “New laws target coercive control” (16 May 2023), online: *Queensland Government* <[www.qld.gov.au/law/law-week/new-laws](http://www.qld.gov.au/law/law-week/new-laws)>.

be assessed by considering the totality of the behaviours [emphasis added].

Section 54F elaborates on what “abusive behaviour” means:

- (1) In this Division, abusive behaviour means behaviour that consists of or involves—
  - (a) violence or threats against, or intimidation of, a person, or
  - (b) coercion or control of the person against whom the behaviour is directed.
- (2) Without limiting subsection (1), engaging in, or threatening to engage in, the following behaviour may constitute abusive behaviour—
  - (a) behaviour that causes harm to a child if a person fails to comply with demands made of the person,
  - (b) behaviour that causes harm to the person against whom the behaviour is directed, or another adult, if the person fails to comply with demands made of the person,
  - (c) behaviour that is economically or financially abusive,
 

Examples for paragraph (c)—

    - withholding financial support necessary for meeting the reasonable living expenses of a person, or another person living with or dependent on the person, in circumstances in which the person is dependent on the financial support to meet the person’s living expenses
    - preventing, or unreasonably restricting or regulating, a person seeking or keeping employment or having access to or control of the person’s income or financial assets, including financial assets held jointly with another person
  - (d) behaviour that shames, degrades or humiliates,
  - (e) behaviour that directly or indirectly harasses a person, or monitors or tracks a person’s activities, communications or movements, whether by physically following the person, using technology or in another way,
  - (f) behaviour that causes damage to or destruction of property,
  - (g) behaviour that prevents the person from doing any of the following or otherwise isolates the person—
    - (i) making or keeping connections with the person’s family, friends or culture,
    - (ii) participating in cultural or spiritual ceremonies or practice,
    - (iii) expressing the person’s cultural identity,
  - (h) behaviour that causes injury or death to an animal, or otherwise makes use of an animal to threaten a person,
  - (i) behaviour that deprives a person of liberty, restricts a person’s liberty or otherwise unreasonably controls or regulates person’s day-to-day activities.
 

Examples for paragraph (i)—

- making unreasonable demands about how a person exercises the person's personal, social or sexual autonomy and making threats of negative consequences for failing to comply with the demands
- denying a person access to basic necessities including food, clothing or sleep
- withholding necessary medical or other care, support, aids, equipment or essential support services from a person or compelling the person to take medication or undertake medical procedures [emphasis added].

Section 54G also expands on what “course of conduct” means:

- (1) In this Division, a course of conduct means engaging in behaviour—
  - (a) either repeatedly or continuously, or
  - (b) both repeatedly and continuously.
- (2) For subsection (1), behaviour does not have to be engaged in—
  - (a) as an unbroken series of incidents, or
  - (b) in immediate succession.
- (3) For subsection (1), a course of conduct includes behaviour engaged in—
  - (a) in this State, and
  - (b) in this State and another jurisdiction [emphasis added].

Notably, under section 54H, the prosecution must prove beyond reasonable doubt that “abusive behaviour” formed part of the “course of conduct” but does not have to demonstrate the particulars that would be necessary if the incidents were charged as separate offences. Moreover, like the England and Wales *Domestic Abuse Act 2021*, the *Crimes (Domestic and Personal Violence) Act 2007*<sup>106</sup> was also amended to provide a new definition of “domestic abuse” in law to complement the coercive control offence, which includes coercive control as a form of “domestic abuse” under section 6A.

### *United States*

Several U.S. states have enacted legislation against coercive control (or are in the process of doing so). Since 2020, various states, including Hawaii, Connecticut, Washington, and California, have been introducing civil legislation relating to coercive control to allow the obtainment of civil protection orders on the grounds of coercive control and permitting its consideration in child custody proceedings.<sup>107</sup> Similar bills are pending in other states, including Florida and Massachusetts. Others have proposed

<sup>106</sup> *Crimes (Domestic and Personal Violence) Act 2007*, (NSW), 2007.

<sup>107</sup> See Cross, *supra* note 13 at 222-24.



bills specifically criminalizing coercive control, including New York, South Carolina, and Washington.<sup>108</sup>

## *2. FV or IPV Offences that Address Coercive Control*

### *Scotland*

Rather than creating specific criminal legislation against coercive control, in 2018, Scotland enacted a more general “domestic abuse” offence under the *Domestic Abuse Act 2018*.<sup>109</sup> Given its broad approach, the hybrid offence has a penalty of up to 14 years imprisonment.<sup>110</sup> The offence is described under sections 1 and 2 of the Act as:

1. Abusive behaviour towards a partner or ex-partner
  - (1) A person commits an offence if—
    - (a) the person (“A”) engages in a course of behaviour which is abusive of A’s partner or ex-partner (“B”), and
    - (b) both of the further conditions are met.
  - (2) The further conditions are—
    - (a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm,
    - (b) that either—
      - (i) A intends by the course of behaviour to cause B to suffer physical or psychological harm, or
      - (ii) A is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.
  - (3) In the further conditions, the references to psychological harm include fear, alarm and distress.
2. What constitutes abusive behaviour
  - (1) Subsections (2) to (4) elaborate on section 1(1) as to A’s behaviour.
  - (2) Behaviour which is abusive of B includes (in particular)—
    - (a) behaviour directed at B that is violent, threatening or intimidating,
    - (b) behaviour directed at B, at a child of B or at another person that either—
      - (i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or
      - (ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).

<sup>108</sup> *Ibid* at 224-26.

<sup>109</sup> *Domestic Abuse (Scot) Act 2018* ASP 5.

<sup>110</sup> *Ibid*, s 9.

- (3) The relevant effects are of—
  - (a) making B dependent on, or subordinate to, A,
  - (b) isolating B from friends, relatives or other sources of support,
  - (c) controlling, regulating or monitoring B's day-to-day activities,
  - (d) depriving B of, or restricting B's, freedom of action,
  - (e) frightening, humiliating, degrading or punishing B.
- (4) In subsection (2)—
  - (a) in paragraph (a), the reference to violent behaviour includes sexual violence as well as physical violence,
  - (b) in paragraph (b), the reference to a child is to a person who is under 18 years of age [emphasis added].

What is unique about the offence is that it focuses on the entire abusive context, which helps address the fragmentation that commonly occurs in criminal law.<sup>111</sup> Therefore, the law targets all forms of abuse, including coercive control, captured under section 2(3) of the Act.<sup>112</sup> The law also significantly changed criminal procedure, evidence, and sentencing, including preventing the perpetrator from using the justice system to further exert coercive control.<sup>113</sup> Also noteworthy is that the offence has maintained Scotland's early 2000 deliberate policy decision to use the term "abuse" rather than "violence" to better reflect the reality that not all forms of abuse will involve physical or sexual violence.<sup>114</sup> Under section 1, the offence also relies on a "course of behaviour," which section 10(4) defines as behaviour occurring on at least two occasions.

Like the Republic of Ireland offence, the Scottish offence applies only to current or former intimate partners to acknowledge that IPV dynamics may differ from abuse committed against other family members. Nevertheless, the Scottish offence provides for an associated statutory aggravation whereby the behaviour committed by the perpetrator extends to children involved or affected by the offence.<sup>115</sup> However, Cairns and

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<sup>111</sup> Ilona Cairns & Isla Callander, "Gold Standard' Legislation for Adults Only: Reconceptualising Children as 'Adjoined Victims' Under the Domestic Abuse (Scotland) Act 2018" (2022) 31:6 Soc & Leg Stud 914 at 915 [Cairns & Callander].

<sup>112</sup> "Domestic Abuse (Scotland) Bill" (2017) at 3, online (pdf): *The Scottish Parliament* <[www.parliament.scot/-/media/files/legislation/bills/previous-bills/domestic-abuse-bill/introduced/policy-memorandum-domestic-abuse-scotland-bill.pdf](http://www.parliament.scot/-/media/files/legislation/bills/previous-bills/domestic-abuse-bill/introduced/policy-memorandum-domestic-abuse-scotland-bill.pdf)> [Scottish Parliament].

<sup>113</sup> *Ibid* at 2.

<sup>114</sup> *Ibid*; Burman & Brooks-Hay, *supra* note 21 at 68.

<sup>115</sup> Scottish Parliament, *supra* note 112 at 18.

Callander have raised concerns about this statutory aggravation.<sup>116</sup> The issue raised is that the harm experienced by children in intimate partner coercive control is not considered together with their abused parent or caregiver.<sup>117</sup> As such, they argue that an amendment should be made by introducing a parallel offence that reconceptualizes children as “adjointed victims”<sup>118</sup> of coercive control together with the parent or caregiver who shares the experience of coercive control. By doing so, the amendment will not position children as “collateral damage outside of the direct context of the core offence.”<sup>119</sup> Therefore, while some have praised the innovative “domestic abuse” offence as a new “gold standard,”<sup>120</sup> Cairns and Callander caution against adopting the Scottish approach elsewhere as “it remains deeply flawed in its treatment of children.”<sup>121</sup>

Following the enactment of the domestic abuse offence in 2019, of the 64,807 incidents of “domestic abuse” recorded in 2021-2022, 39% involved at least one crime or offence.<sup>122</sup> Where gender information was recorded, 81% of the “domestic abuse” incidents in 2021-2022 had a female victim and a male suspected perpetrator.<sup>123</sup>

### *Northern Ireland*

In 2021, Northern Ireland enacted a similar “domestic abuse” offence to Scotland with an analogous definition under section 1 of the *Domestic Abuse and Civil Proceedings Act 2021*.<sup>124</sup> Though the offence is not specific to coercive control, it “closes a gap in the law by criminalising a course of abusive behaviour, that is behaviour that occurs on two or more occasions, against an intimate partner, former partner or family member.”<sup>125</sup> Northern

<sup>116</sup> Cairns & Callander, *supra* note 111 at 914.

<sup>117</sup> *Ibid* at 920.

<sup>118</sup> *Ibid* at 921.

<sup>119</sup> *Ibid* at 935.

<sup>120</sup> See e.g., Marsha Scott, “The Making of the New ‘Gold Standard’: The Domestic Abuse (Scotland) Act 2018” in Marilyn McMahon & Paul McGorrrery, eds, *Criminalizing Coercive Control: Family Violence and the Criminal Law* (Singapore: Springer Nature, 2020).

<sup>121</sup> Cairns & Callander, *supra* note 111 at 935.

<sup>122</sup> “Domestic abuse recorded by the police in Scotland, 2021-22” (29 November 2022), online: Scottish Government <[www.gov.scot/news/domestic-abuse-recorded-by-the-police-in-scotland-2021-22/](http://www.gov.scot/news/domestic-abuse-recorded-by-the-police-in-scotland-2021-22/)> [perma.cc/E29K-GQ88].

<sup>123</sup> *Ibid*.

<sup>124</sup> *Domestic Abuse and Civil Proceedings Act 2021* (NI), 2021.

<sup>125</sup> “Abusive Behaviour in an intimate or family relationship: Domestic Abuse Offence”

Ireland's Department of Justice also issued statutory guidance describing the various "abusive behaviours" that form part of the offence, which includes coercive control.<sup>126</sup>

Like the Scottish offence, the Northern Ireland crime is a hybrid offence with up to 14 years imprisonment.<sup>127</sup> According to the Police Service of Northern Ireland, in the 12 months from July 2021 to the end of June 2022, 22,142 "domestic abuse" crimes were recorded by the police.<sup>128</sup>

### *3. Other Legislation Relating to Coercive Control*

Many other jurisdictions have also implemented measures to combat FV or IPV by criminalizing various forms of abuse against intimate partners or family members, including specific FV or IPV offences.<sup>129</sup> However, most jurisdictions do not capture coercive control, though some do address certain coercive or controlling behaviours. Like Canada, where there is no specific criminal offence against FV or IPV, they are often considered an aggravating factor during sentencing. The following are a few examples of jurisdictions that have enacted criminal legislation relating to coercive control.<sup>130</sup>

#### *Australia: Tasmania*

In 2004, the Australian island state of Tasmania enacted the *Family Violence Act 2004*<sup>131</sup>, broadening the definition of "family violence" under

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(2022) at 1, online (pdf): *Department of Justice* <[www.justice-ni.gov.uk/sites/default/files/publications/justice/domestic%20abuse%20offence%20guidance%20-%20march%202022.pdf](http://www.justice-ni.gov.uk/sites/default/files/publications/justice/domestic%20abuse%20offence%20guidance%20-%20march%202022.pdf)> [perma.cc/VN4V-L68K].

<sup>126</sup> *Ibid* at 5.

<sup>127</sup> *Ibid* at 36.

<sup>128</sup> "Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland" (25 August 2022), online (pdf): *Police Service of Northern Ireland* <[www.psni.police.uk/sites/default/files/2022-09/domestic-abuse-bulletin-jun\\_-22\\_0.pdf](http://www.psni.police.uk/sites/default/files/2022-09/domestic-abuse-bulletin-jun_-22_0.pdf)> [perma.cc/5JAF-CDND].

<sup>129</sup> See e.g., "Beijing Platform for Action: Combating coercive control and psychological violence against women in the EU Member States" (2022), online (pdf) at 46-53: *European Institute for Gender Equality* <[eige.europa.eu/sites/default/files/documents/combating\\_coercive\\_control\\_and\\_psychological\\_violence\\_against\\_women\\_in\\_the\\_eu\\_member\\_states.pdf](http://eige.europa.eu/sites/default/files/documents/combating_coercive_control_and_psychological_violence_against_women_in_the_eu_member_states.pdf)> [European Institute for Gender Equality].

<sup>130</sup> See *ibid* at 123-146 for more examples of criminal legislation relating to FV, IPV, and coercive control in European countries.

<sup>131</sup> *Family Violence Act 2004* (TAS), 2004.

section 7. While the Act does not explicitly make FV, IPV, or coercive control criminal offences, it introduced two new related criminal offences: (1) economic abuse and (2) emotional abuse or intimidation. Under section 8 of the Act, committing economic abuse is to “intentionally and unreasonably control or intimidate their partner or cause their partner mental harm, apprehension or fear” by pursuing a course of conduct through several behaviours related to economic abuse.<sup>132</sup> Under section 9, emotional abuse or intimidation is defined as a person seeking “a course of conduct that he or she knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, his or her partner,” which includes restricting freedom of movement by threats or intimidation.<sup>133</sup> Both offences have a maximum penalty of two years imprisonment or a fine.

Despite being one of the first jurisdictions to address certain coercive and controlling behaviours in 2004, by 2015, only eight people had been convicted of emotional abuse or intimidation, and no one had been convicted of economic abuse.<sup>134</sup> The few convictions have been attributed to the offences’ built-in limitations, including a short statutory limitation period of 12 months, and requiring specific intent to control or intimidate unreasonably. The latter creates difficulties in prosecuting the offences because it leaves the possibility of the accused arguing that the behaviour was reasonably controlling or intimidating.<sup>135</sup>

### France

Although France has not explicitly legislated against FV, IPV, or coercive control, it adopted *Loi n° 2010-769* in 2010.<sup>136</sup> The law created Title XIV in the French *Civil Code* and established new measures to protect individuals against abuse in various family settings. In a criminal law context, the law ensured that several abuse-related offences could be psychological in nature. For example, “moral harassment” under section

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<sup>132</sup> *Ibid.*, s 8.

<sup>133</sup> *Ibid.*, s 9.

<sup>134</sup> Marilyn McMahon & Paul McGorriery, “Criminalising Emotional Abuse, Intimidation and Economic Abuse in the Context of Family Violence: The Tasmanian Experience” (2016) 35:2 U Tasm L Rev 1 at 11.

<sup>135</sup> *Ibid.* at 8.

<sup>136</sup> *LOI no 2010-769 du 9 juillet 2010 relative aux violences faites spécifiquement aux femmes, aux violences au sein des couples et aux incidences de ces dernières sur les enfants*, JO, 10 July 2010, no 2.

222-33-2 of the criminal code is “to harass others by words or repetitive behaviours that have the purpose or effect of degrading another person’s working conditions, likely to affect this person’s rights and dignity, to alter his/her physical or mental health or to jeopardise his professional future.”<sup>137</sup> The offence is punishable by a maximum penalty of three years in prison and a fine when committed in an IPV context.

In 2020, France enacted *Loi n° 2020-936*<sup>138</sup> to further protect victims of FV and IPV in both civil and criminal contexts. Among several amendments, the new law introduced geolocation bracelets that alert victims if the wearer comes within a perimeter set by a judge. Moreover, the law prevents people from using geolocation devices to know a victim’s location, to record or transmit another person’s geolocation information without that person’s consent, and the theft of a communication device by an intimate partner.<sup>139</sup>

### *Denmark*

Although Denmark has not criminalized FV or IPV specifically, it has criminalized “psychological violence” under section 243 of the Danish Criminal Code in 2019, with “coercive control” and “abusive behaviour” being captured by the legislation:

A person who belongs to or is closely connected with another’s household or has previously had such an affiliation with the household, and who repeatedly over a period of time exposes the other to grossly degrading, insulting or abusive behaviour that can be considered improper control of the other, including the exercise of coercive control, is punishable for psychological violence [emphasis added].<sup>140</sup>

Like most jurisdictions addressing coercive control, the offence includes a requirement that the behaviour occurs repeatedly over a period of time. Moreover, the offence relates to FV and IPV, referring to “a person who belongs to or is closely connected with another’s household or has previously had such an affiliation with the household,” which includes

<sup>137</sup> European Institute for Gender Equality, *supra* note 129 at 127.

<sup>138</sup> *LOI n° 2020-936 du 30 juillet 2020 visant à protéger les victimes de violences conjugales*, JO, 31 July 2020, no 2.

<sup>139</sup> Nicholas Boring, “France: Parliament adopts law against domestic violence” (7 August 2020), online: *Library of Congress* <[www.loc.gov/item/global-legal-monitor/2020-08-07/france-parliament-adopts-law-against-domestic-violence/](http://www.loc.gov/item/global-legal-monitor/2020-08-07/france-parliament-adopts-law-against-domestic-violence/)>.

<sup>140</sup> European Institute for Gender Equality, *supra* note 129 at 123.

intimate partners who have never shared a residence.<sup>141</sup> The offence is punishable by a prison sentence of up to three years or a fine.

### *Spain*

Spain criminalized several offences relating to IPV and coercive control, including a crime of “coercion,” which is defined under section 172.2 of the criminal code as:

Whoever lightly coerces his wife or former wife, or woman with whom he has been bound by a similar emotional relation even without cohabiting, shall be punished with a sentence of imprisonment of 6 months to 1 year, or community service from 31 to 80 days and, in all cases, deprivation of the right to own and carry weapons from a year and a day to 3 years, as well as, when the judge or court of law sees it fit in the interest of the minor or person with disability requiring special protection, special barring from exercise of parental authority, guardianship, care, safekeeping or fostering for up to 5 years. The same punishment shall be imposed on whoever lightly coerces an especially vulnerable person who lives with the offender [emphasis added].<sup>142</sup>

What is notable about this offence is that it pertains specifically to instances of coercion committed by men against women.

### *New Zealand*

Although New Zealand does not have specific FV, IPV, or coercive control offences, the *Family Violence Act 2018*<sup>143</sup> provides a definition of “family violence” under section 9, which includes coercive control:

#### 9. Meaning of family violence

- (1) In this Act, family violence, in relation to a person, means violence inflicted—
  - (a) against that person; and
  - (b) by any other person with whom that person is, or has been, in a family relationship.
- (2) In this section, violence means all or any of the following:
  - (a) physical abuse;
  - (b) sexual abuse;
  - (c) psychological abuse.
- (3) Violence against a person includes a pattern of behaviour (done, for example, to isolate from family members or friends) that is made up of a number of acts that are all or any of physical abuse, sexual abuse, and psychological abuse, and that may have 1 or both of the following features:

<sup>141</sup> *Ibid* a 47.

<sup>142</sup> *Ibid* at 123.

<sup>143</sup> *Family Violence Act 2018* (NZ), 2018.

- (a) it is coercive or controlling (because it is done against the person to coerce or control, or with the effect of coercing or controlling, the person);
- (b) it causes the person, or may cause the person, cumulative harm [emphasis added].

The Act works alongside criminal legislation, such as section 194A of the *Crimes Act 1961*,<sup>144</sup> which pertains to the crime of “assault on a person in a family relationship.” The term “family relationship” is defined under section 12 of the *Family Violence Act 2018* as:

- For the purposes of this Act, a person (A) is in a family relationship with another person (B) if A—
- (a) is a spouse or partner of B; or
  - (b) is a family member of B; or
  - (c) ordinarily shares a household with B (see also section 13); or
  - (d) has a close personal relationship with B (see also section 14).

#### IV. AN INTERNATIONAL COMPARATIVE ANALYSIS OF LEGISLATION AGAINST COERCIVE CONTROL

A careful examination of Canada’s current legislative approach to addressing coercive control and that of other jurisdictions examined in Part III reveals several key legislative characteristics.<sup>145</sup>

First, it is evident from Part III that there is a noticeable absence of consistency in addressing coercive control via criminal law. Nonetheless, two common approaches have been used: (1) supplementing existing criminal offences with a stand-alone crime of coercive control, and (2) enacting an all-encompassing FV or IPV offence that captures coercive control. The *actus reus* differs in the two approaches, where “coercive and controlling behaviour” is usually targeted in the former and “abusive behaviour” in the latter.<sup>146</sup> England and Wales, the Republic of Ireland, and the Australian state of New South Wales have adopted the first approach. Canada has also proposed criminal legislation against coercive

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<sup>144</sup> *Crimes Act 1961* (NZ), 1961.

<sup>145</sup> See McMahon & McGorry, *supra* note 20 at 197-215 for a more thorough legal comparative analysis of the English and Welsh, Scottish, Irish, and Tasmanian offences.

<sup>146</sup> *Ibid* at 202.



control using this method. Conversely, Scotland and Northern Ireland have adopted the second approach. Canadian federal family law under the *Divorce Act* has also favoured the second approach by enacting a broad FV definition that includes coercive control. However, others, like France, Spain, and the Australian state of Tasmania, have enacted legislation addressing some coercive and controlling behaviours but have not adopted legislation specifically addressing coercive control. Denmark is also noteworthy as it has captured coercive control through a unique “psychological violence” offence. While the various approaches used to address coercive control via criminal law are different in scope and practice, many of the currently proposed and enacted offences are based on the same conceptualization of coercive control discussed in the seminal works of Stark and Johnson mentioned in Part II.<sup>147</sup>

Second, some jurisdictions have entirely omitted a definition of coercive control in law. Although corresponding statutory guidance has been provided in some jurisdictions, others have only defined related terms such as “abusive behaviour.” The proposed Canadian criminal bills and the *Divorce Act* present the same issue of failing to define “coercion” and “control.” Moreover, some jurisdictions, including Canada, separate coercion from control by using language such as “controlling or coercive conduct.” Doing so makes it theoretically possible to be charged and convicted of one without the other. However, it is unclear how separating the two behaviours will capture the essence of what coercive control is understood to be doing, as much of the existing literature suggests that offenders rely on coercion to achieve the desired outcome of control.<sup>148</sup>

Third, there are differences in whom the laws target. Current and former partners, whether they live together or not, are captured in most jurisdictions with a coercive control offence. Others target current and former co-habituating partners but do not extend to partners who do not live together. Moreover, some offences, including the proposed Canadian criminal bills, extend to family members. Conversely, others, like the Scottish offence, only target current or former intimate partners. There is also considerable variation across jurisdictions in who is considered a

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<sup>147</sup> See generally Silverstone, *supra* note 16 at 2; Burman & Brooks-Hay, *supra* note 21 at 68.

<sup>148</sup> See especially Hamberger, Larsen & Lehrner, *supra* note 19 at 1-3; Stark, *supra* note 18 at 229; Kelly & Johnson, *supra* note 27 at 478; Dutton & Goodman, *supra* note 59 at 743.

“family member” and an “intimate partner.” For example, some only target spouses, while others include common law and dating partners.

Fourth, there are differences in the offences’ mens rea. Some, like the Canadian proposed criminal bills, provide for either a subjective or objective standard of proof by using language such as “know or ought to know.” In contrast, others, like Scotland, have focused on an objective and subjective standard by requiring a reasonable person test plus intention or recklessness to determine whether the behaviours have harmed the victim.<sup>149</sup> However, the Australian Psychological Society (APS) has raised concerns about using an objective standard to prove harm caused by coercive control. While it acknowledges that a reasonable person test places the focus of the offence on the perpetrator’s behaviour, it argues that a reasonable person may not always be able to identify the link between a perpetrator’s behaviour and the likely adverse impact that it would cause in every case.<sup>150</sup> The APS provides an illustrating example:

[T]he giving of flowers by a perpetrator may be coercive if this is a reward for the victim-survivor cancelling social activities in a way that perpetuates their social isolation. Without considering the totality of behaviour in context, focusing on isolated snapshots of behaviour in this instance may distract from underlying coercive actions as experienced by the victim-survivor.<sup>151</sup>

According to the APS, the objective test may also “deny victim-survivors a voice to be able to demonstrate the effect of the perpetrator’s actions.”<sup>152</sup> Therefore, it suggests implementing a subjective standard instead. However, it also recommends that laws against coercive control allow, but not require, evidence of actual harm to meet the criteria for the offence and to legislate “safeguards to avoid any potential adverse inferences that could be drawn if evidence of actual harm is not adduced.”<sup>153</sup> The APS also proposes that evidence presented by mental health professionals be

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<sup>149</sup> McMahon & McGorry, *supra* note 20 at 208-209.

<sup>150</sup> Australian Psychological Society, “RE: Crimes Legislation Amendment (Coercive Control) Bill 2022” (31 August 2022) at 1-2, online (pdf): <psychology.org.au/getmedia/bd79ad05-67f6-42fa-ab6c-ca71c4708431/20220831-letter-z-burgess-aps-feedback-on-the-crimes-legislation-amendment-(coercive-control)-bill-2022-web.pdf> [Australian Psychological Society].

<sup>151</sup> *Ibid* at 2.

<sup>152</sup> *Ibid*.

<sup>153</sup> *Ibid*.

permitted if it could help explain the “significant and lasting effects of a perpetrator’s actions within the context of the relationship.”<sup>154</sup> However, others have argued that Scotland may have the most appropriate model, as relying on an objective standard “makes it much more difficult for a defendant to be acquitted on the basis that they did not appreciate that their behaviour would cause the prohibited harm.”<sup>155</sup> Moreover, an objective standard protects victims against the re-victimization of having to recount their traumatizing experiences and against dismissing accounts of abuse for not showing signs of fear when recounting events. An objective standard also has no requirement that victims experience the behaviour as harmful themselves.

Fifth, while many jurisdictions have attempted to move away from an incident-led approach, there is disagreement over the frequency of behaviour required to constitute an offence. Though most jurisdictions require the behaviours to be “repeated or continuous,” “persistent,” or form a “course of conduct,” there are concerns about what this entails as the terms are not defined in most offences. The APS argues that using such wording without defining them creates significant ambiguity as it is unclear how far apart in time coercive and controlling behaviours can be to form part of the offence.<sup>156</sup> However, the absence of a legislative definition of the word “repeatedly” in the criminal harassment offence under s.264(2)(a) and (b) of the Canadian *Criminal Code* does not seem to pose constitutional problems for its vagueness, although trial and appeal courts have interpreted the term differently.<sup>157</sup> While some jurisdictions are more descriptive by requiring the behaviours to occur on at least two occasions to constitute an offence, such referencing may bring the problem back towards an incident-led approach by having the behaviours occur on specific occasions in time rather than being considered ongoing. Moreover, referencing two occasions does not allow for a more contextual analysis of individual cases.<sup>158</sup> For example, while the perpetrator’s behaviour may not be repeated or continuous, the adverse impact on the

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<sup>154</sup> *Ibid.*

<sup>155</sup> McMahon & McGorriery, *supra* note 20 at 214.

<sup>156</sup> Australian Psychological Society, *supra* note 150 at 2-3.

<sup>157</sup> *R v Ohenhen*, 2005 CanLII 34564 (ONCA); *R v Belcher*, 1998 50 OTC 189 (Gen Div); *R v Lafreniere*, 1994 22 WCB (2d) 519 (CJ Prov Div); *R v Thélémaque*, 2008 QCCQ 2308; *R v Saloio*, 2010 ONCJ 164, *R v Ryback*, 1996 105 CCC (3d) 240 (BCCA).

<sup>158</sup> McMahon & McGorriery, *supra* note 20 at 170-171.

victim could be. Consequently, the APS suggests that the frequency of the offence should consider not only the temporal dimensions of the perpetrator's ongoing behaviour but also the temporal adverse impact on the victim.<sup>159</sup> This will ensure that the victim will not have to be subjected to the perpetrator's repeated or continuous behaviour before legal intervention can occur and will acknowledge that single acts can have lasting effects on victims.

Sixth, most jurisdictions have adopted a gender-neutral approach to legislation against FV, IPV, and coercive control, even if emerging data suggest they may be highly gendered.<sup>160</sup> Spain is a notable exception where its "coercion" offence pertains specifically to men against women, thus acknowledging the gendered asymmetry regarding abuse.

Finally, maximum penalties vary widely among jurisdictions. While most jurisdictions have adopted hybrid offences, penalties range from a mere fine or 2 years imprisonment in Tasmania to 14 years in Scotland and Northern Ireland. However, offences more specific to coercive control have ranged from 5 years imprisonment in England and Wales to 7 years in New South Wales.

## V. RECOMMENDATIONS

While the criminalization of coercive control has been praised by many,<sup>161</sup> it certainly has not come without its critics.<sup>162</sup> Others embrace the idea but have raised concerns about how the proposed Canadian criminal bills went about doing so.<sup>163</sup> Given that few empirical studies have

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<sup>159</sup> *Ibid* at 2.

<sup>160</sup> See e.g., Stripe, *supra* note 92. See also Part I.

<sup>161</sup> See e.g., Lori Chambers, "Submission for Bill C-247" (2021) at 6, online (pdf): *House of Commons of Canada* <[www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11101619/br-external/ChambersLori-e.pdf](http://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11101619/br-external/ChambersLori-e.pdf)> [perma.cc/9APV-EEL9].

<sup>162</sup> See e.g., Cross, *supra* note 13 at 243.

<sup>163</sup> Haist, *supra* note 77; Iqra Khalid, "The Shadow Pandemic: Stopping Coercive and Controlling Behaviour in Intimate Relationships: Report of the Standing Committee on Justice and Human Rights" (2021) at 29-30, online (pdf): *House of Commons Chambres des Communes Canada* <[www.ourcommons.ca/Content/Committee/432/JUST/Reports/RP11257780/justtrp09/justtrp09-e.pdf](http://www.ourcommons.ca/Content/Committee/432/JUST/Reports/RP11257780/justtrp09/justtrp09-e.pdf)> [perma.cc/4LZA-ACNY] [Khalid].

examined coercive control offences in practice,<sup>164</sup> it is difficult to draw any conclusive inferences regarding the benefits or drawbacks of criminalizing coercive control. Moreover, the inferences that can be drawn are limited. For example, although some empirical evidence demonstrates significant limitations in applying a coercive control offence primarily due to evidentiary challenges, much of the existing literature has only examined the viability of the England and Wales offence.<sup>165</sup> Given that coercive control offences vary widely among jurisdictions, this variation severely restricts the findings' generalizability. Whether these findings can be replicated in jurisdictions with different criminal legislation against coercive control remains to be seen. Furthermore, there is currently no accepted metric for measuring the effectiveness of coercive control legislation. Whether the desirable outcome of the legislation is to achieve higher arrest and conviction rates or simply have a preventative deterrent effect remains astonishingly understudied. As such, the currently available empirical evidence makes it impossible to either conclusively recommend or reject the implementation of criminal legislation against coercive control in Canada or predict its effectiveness in practice if implemented. This is especially true given that Canada has proposed legislation that is different from those studied.

However, some researchers have argued that “reservations cannot justify continued inaction by the criminal law towards the use of non-physical tactics that generate a psychological impact upon the victim, ultimately inhibiting their liberty and (for many) being more damaging than a single act of violence.”<sup>166</sup> Thus, in light of Parliament's consideration of a coercive control offence, three recommendations are offered for Parliament if it decides to officially criminalize it in Canada to ensure its desired effect.<sup>167</sup> Since there is currently a lack of empirical

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<sup>164</sup> But see Charlotte Barlow et al, “Putting Coercive Control into Practice: Problems and Possibilities” (2020) 60:1 Brit J Crim 160 [Barlow]; Brennan & Myhill, *supra* note 95. See also Part III regarding the issues with the England and Wales offence.

<sup>165</sup> See e.g., Barlow, *ibid* at 172-75.

<sup>166</sup> McMahon & McGorrrery, *supra* note 20 at 199.

<sup>167</sup> See the following for other suggested legislative reforms surrounding coercive control in Canada: Khalid, *supra* note 163 at 1; Gill & Aspinall, *supra* note 80 at 9; Haist, *supra* note 77 at 71-77; Karen Vecchio, “Towards a Violence-Free Canada: Addressing and Eliminating Intimate Partner and Family Violence: Report of the Standing Committee on the Status of Women” (2022) at 51-82, online (pdf): *House of Commons Chambre des Communes Canada* <publications.gc.ca/collections/collection\_2022/parl/xc71-

evidence showing the superiority of either a stand-alone coercive control offence or a more general FV or IPV offence that captures coercive control, recommendations regarding both approaches will be discussed.

### **A. Recommendation 1: Have well-defined and consistent definitions of FV, IPV, and coercive control across all provincial, territorial, and federal legislative settings**

Although some jurisdictions have narrowly focused their offences on current or former partners, the Canadian proposed criminal coercive control bills and section 718.2(a)(ii) of the *Criminal Code* suggest that Canadian criminal law extends to both FV and IPV contexts. However, the terms “IPV,” “FV,” “coercive control,” and “family member” are currently undefined in the *Criminal Code*. Thus, one option could be implementing a *Criminal Code* section 2 definition of “family member” equivalent to that of the *Divorce Act* to create consistency in terminology alongside the existing *Criminal Code* “intimate partner” definition. Moreover, “IPV,” “FV,” and “coercive control” definitions could also be implemented under section 2 of the *Criminal Code*, with the FV definition matching that of the *Divorce Act*. Parliament could also define “IPV,” “intimate partner,” and “coercive control” in the *Divorce Act*, as it does not currently define the terms. The “IPV” definition in the *Divorce Act* should match that of the *Criminal Code*. Provincial and territorial FV and IPV legislation should also attempt to define these terms similarly to federal legislation.

Alternatively, a new separate Act could be implemented, modelled after the *Family Violence Act 2018* in New Zealand. The objective of the Act would be to create definitions of “IPV,” “FV,” “coercive control,” “family member,” and “intimate partner,” which could be applied across all areas of law in Canada. The proposed Act would close the discrepancy between criminal and family law by establishing uniform definitions that would operate in conjunction with criminal and family legislation.

In addition, the U.K. frequently produces statutory guidance together with its legislation to facilitate comprehension. Similar statutory guidance could be provided to assist legal professionals in understanding why the

legislation was enacted and how to apply it effectively and uniformly across Canada. This statutory guidance can serve as a model to standardize Crown counsel manuals to address the current inconsistencies.

Regardless of the approach used, providing clear, uniform definitions in the law would greatly enhance the effectiveness of both a stand-alone coercive control offence and an all-encompassing FV or IPV offence. They would help clarify who the victims and perpetrators are, explain what IPV and FV-related behaviours the law is trying to capture, and provide a greater understanding of how coercive control fits within the broader concepts of FV and IPV. Doing so would be especially beneficial for specialized courts such as the Integrated Domestic Violence Court in Toronto, where a single judge handles criminal and family proceedings concurrently in cases involving FV and IPV under the court's jurisdiction.<sup>168</sup> The court's objective is to help bridge the gap between criminal and family law processes, which otherwise work in silos.<sup>169</sup> Consistency in the treatment and language of FV, IPV, and coercive control in both criminal and family law would help integrate the two areas of law and assist the work done by such courts. Moreover, there are real concerns of vagueness and overbreadth if coercive control (or coercive and controlling behaviour) is not adequately defined.<sup>170</sup> A lack of concrete definitions will be left for courts to determine what such conduct entails, which may cause the coercive control offence to be applied too broadly and risk being constitutionally unviable.<sup>171</sup> Having well-defined definitions that clarify the coercive and controlling behaviours and individuals the law attempts to target will help address the nuances of the offence in a way that is more closely connected to the harm Parliament is trying to address. This will help ensure the law survives constitutional scrutiny.

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<sup>168</sup> Rachel Birnbaum, Nicholas Bala, & Peter Jaffe, "Establishing Canada's First Integrated Domestic Violence Court: Exploring Process, Outcomes, and Lessons Learned" (2014) 29:1 Can J Fam L 117 at 147.

<sup>169</sup> *Ibid* at 122-24.

<sup>170</sup> Sheley, *supra* note 51 at 1338-43.

<sup>171</sup> *R v Levkovic*, 2013 2 SCR 204 at para 10.

## **B. Recommendation 2: Include the examination of criminalizing coercive control within the proposed national IPV prevention strategy**

It is essential to have a comprehensive approach when addressing the issues of FV and IPV to ensure a sustained reduction in their prevalence, as several factors contribute to their occurrence. This is precisely what the IPV prevention strategy currently debated in the Senate under Bill S-249<sup>172</sup> is attempting to do. A primary objective of the IPV prevention strategy is to ensure that the approach taken by the Minister for Women and Gender Equality and Youth is all-encompassing in addressing IPV:

National strategy

3 (1) The Minister must develop a national strategy for the prevention of intimate partner violence.

Consultations:

(2) In developing the national strategy for the prevention of intimate partner violence, the Minister must consult with other federal ministers, representatives of provincial governments who are responsible for social development, families and public safety, and representatives of groups who provide services to or advocate on behalf of victims of intimate partner violence, with respect to:

- (a) the adequacy of current programs and strategies aimed at preventing intimate partner violence and at protecting and assisting victims of intimate partner violence;
- (b) partnerships between police services, health care facilities, advocacy groups and shelters in the prevention of intimate partner violence and the protection of victims of intimate partner violence;
- (c) the requirements for representatives of health care facilities, medical practitioners and nurse practitioners to provide information on access to legal assistance to patients who they suspect may be victims of intimate partner violence;
- (d) the requirements for health professionals to make a report to the police if they suspect that a patient is a victim of intimate partner violence;
- (e) the financial and other costs of implementing the national strategy; and
- (f) any constitutional, legal or jurisdictional implications of implementing the national strategy.

Given that there is no clear evidence of whether criminalizing coercive control will effectively address the larger issues of FV and IPV, its criminalization should be considered part of the proposed national IPV

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<sup>172</sup> Bill S-249, *An Act Respecting the Development of a National Strategy for the Prevention of Intimate Partner Violence*, 1st Sess, 44th Parl, 2021 (second reading 1 June 2023).



prevention strategy. Doing so will help provide a more nuanced understanding of whether criminalizing coercive control is the best approach to addressing and preventing FV and IPV, as the examination will be conducted within the context of potential counterarguments or alternative measures of addressing FV and IPV. Moreover, the debate surrounding the criminalization of coercive control, whether as a stand-alone offence or within a broader FV or IPV offence, will also be done with the extensive collaborations required under Bill S-249. This will provide additional context and insights into the complexities of this issue and offer suggestions for further research or policy development to ensure lawmakers better understand the potential benefits and drawbacks of criminalizing coercive control and whether alternative measures should be considered.

Therefore, Bill S-249 should expand to require the following. First, the Minister should, in developing a national IPV prevention strategy, define and explain what is meant by “FV,” “IPV,” and “coercive control.” Second, consideration should be given to the context of the proposed legislation against coercive control in Canada. This includes the current debate surrounding the criminalization of coercive control, the purported urgency of addressing it via criminal law, how the current criminal law fails to address it, the proposed criminal legislation’s key objectives, its potential impact on perpetrators and victims, and how Parliament intends to address the raised shortcomings of the proposed coercive control bills. Third, there should be consideration of existing studies on coercive control legislation, including their limitations, potential biases, or confounding factors that may affect the validity of the findings and any conflicting results or areas of uncertainty. This will help in the evaluation of the strength of the evidence and provide a more nuanced understanding of the current state of research in this area. Fourth, the Minister should consider including examples or case studies of other jurisdictions that have implemented legislation against coercive control and their positive or negative outcomes, alongside the key factors contributing to their successes or failures. Specific examples should be provided to help understand the implications of the proposed legislation. This could involve describing real-life situations where coercive control has been used and explaining how the proposed legislation would address these situations. This will help in the understanding of the potential benefits of implementing criminal legislation against coercive control in

Canada. Fifth, an explanation is needed regarding why and how the proposed legislation in Canada differs from the legislation studied in the available empirical literature and that of other jurisdictions. This will help shed light as to whether a stand-alone coercive control offence or an all-encompassing FV or IPV offence that captures coercive control would be more appropriate. Finally, the Minister should describe the potential future research directions or policy implications based on the current state of knowledge and any remaining uncertainties. This would help in the comprehension of the broader implications of the current evidence and what further work needs to be done.

### C. Recommendation 3: Have robust implementation and evaluation plans

If Parliament enacts criminal legislation against coercive control, the benefits of a new criminal offence will depend on the legislation's successful operation.<sup>173</sup> When British Columbia enacted the *Family Law Act*<sup>174</sup> in 2011, there were high hopes that introducing a broad "family violence" definition under section 1 would assist judges in making better decisions regarding a child's best interest. However, a case law review revealed that the legislation did not necessarily impact judges' parental custody decisions.<sup>175</sup> These findings are consistent with a study conducted by the Rise Women's Legal Centre in British Columbia, which found that women reported that police, lawyers, and judges did not appreciate the impacts or safety risks of non-physical violence despite a broadened definition of FV in the provincial *Family Violence Act*.<sup>176</sup> The authors concluded that "the family law system may have changed its legislation, but it did not change its underlying attitudes and assumptions, which are frequently built upon a foundation of preconceived myths and stereotypes about the dynamics of interpersonal violence."<sup>177</sup> There is no reason to

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<sup>173</sup> Tolmie, *supra* note 21 at 53.

<sup>174</sup> *Family Law Act*, SBC 2011, c 25.

<sup>175</sup> Susan B Boyd & Ruben Lindy, "Violence Against Women and the B.C. Family Law Act: Early Jurisprudence" (2016) 35:2 Can J Fam L 1 at 45.

<sup>176</sup> Haley Hrymak & Kim Hawkins, "Why Can't Everyone Just Get Along? How BC's Family Law System Puts Survivors in Danger" (2021) at 25, online (pdf): Rise Women's Legal Centre <womenslegalcentre.ca/wp-content/uploads/2021/01/Why-Cant-Everyone-Just-Get-Along-Rise-Womens-Legal-January2021.pdf>.

<sup>177</sup> *Ibid* at 9.

believe that adding a new coercive control offence will yield distinct results. A recent case law review in Canada revealed that commonly known coercive control tactics occurring post-separation, such as electronic surveillance by the perpetrator, were evident in the facts of the cases, but judges seldom drew their relation to coercive control.<sup>178</sup> This has led the author to conclude that coercive control is still “systematically minimized or ignored unless serious physical violence or threats have immediately preceded the application.”<sup>179</sup>

To address this shortcoming, the recently enacted Bill C-233<sup>180</sup> in April 2023 amended the *Judges Act*<sup>181</sup> to make continuing education seminars on IPV and coercive control available to federally appointed judges. Bill C-233 builds on the recent enactment of Bill C-3<sup>182</sup> in 2021, which made continuing education available for federally appointed judges on sexual assault law and social context, including systemic racism and discrimination. As such, Bill C-233 amended section 60(2)(b) of the *Judges Act* to the following:

Establish seminars for the continuing education of judges, including seminars on matters related to sexual assault law, intimate partner violence, coercive control in intimate partner and family relationships and social context, which includes systemic racism and systemic discrimination [emphasis added].

Similar training initiatives for provincially appointed judges should be considered.

Training for police officers on the dynamics of coercive control has also been proposed,<sup>183</sup> as a considerable volume of research demonstrates that police officers hold diverse understandings of FV and IPV.<sup>184</sup> For

<sup>178</sup> Koshan, Mosher, & Wiegers, *supra* note 16 at 768.

<sup>179</sup> *Ibid* at 779.

<sup>180</sup> *An Act to Amend the Criminal Code and the Judges Act (Violence Against an Intimate Partner)*, SC 2023, c 7.

<sup>181</sup> *Judges Act* RSC 1985, c J-1.

<sup>182</sup> *An Act to amend the Judges Act and the Criminal Code*, SC 2021, c 8.

<sup>183</sup> Evan Stark, “Looking Beyond Domestic Violence: Policing Coercive Control” (2012) 12:2 *Journal of Police Crisis Negotiations* 199.

<sup>184</sup> Celia Serrano-Montilla et al, “Understanding the Components and Determinants of Police Attitudes Toward Intervention in Intimate Partner Violence Against Women: A Systematic Review” (2023) 24:1 *Trauma, Violence, & Abuse* 245; Christina DeJong, Amanda Burgess-Proctor, & Lori Elis, “Police Officer Perceptions of Intimate Partner Violence: An Analysis of Observational Data” (2008) 23:6 *Violence and Victims* 683; Angela R Gover, Dagmar Pudrzynska Paul, & Mary Dodge, “Law

example, a recent study examined how a sample of 169 Canadian police officers in New Brunswick defined “IPV.”<sup>185</sup> The study revealed that the majority (58.6%) defined IPV using legal conceptions based on existing criminal offences and relied on incidents of physical abuse as a primary indicator. Only a minority of respondents (39.1%), particularly female officers, had a clearer understanding of the dynamics of power and control in cases involving IPV. These respondents utilized terms such as “oppression” and “coercion” to define IPV.<sup>186</sup> Despite the study's limited sample size, it suggests a lack of standardized training as officers have different understandings of IPV. A recent study supports this conclusion, as only 42% of a sample of 159 Canadian police officers had received some form of formal training on IPV.<sup>187</sup> These figures differ from other jurisdictions like the Republic of Ireland, where, as of December 2022, over 90% of police officers of its national police service received training on coercive control.<sup>188</sup>

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Enforcement Officers' Attitudes About Domestic Violence” (2011) 17:5 Violence against Women 619; Samara McPhedran, Angela R Gover, & Paul Mazerolle, “A Cross-National Comparison of Police Attitudes About Domestic Violence: A Focus on Gender” (2017) 40:2 Policing: An International Journal of Police Strategies & Management 214; John Balenovich, Elizabeth Grossi, & Thomas Hughes, “Towards a Balanced Approach: Defining Police Roles in Responding to Domestic Violence” (2008) 33:1 American Journal of Criminal Justice 19; Paul C Friday, Scott Metzger, & David Walters, “Policing Domestic Violence: Perceptions, Experience, and Reality” (1991) 16:2 Criminal Justice Review 198; Daniel Lockwood & Ariane Prohaska, “Police Officer Gender and Attitudes Toward Intimate Partner Violence: How Policy Can Eliminate Stereotypes” (2015) 10:1 International Journal of Criminal Justice Sciences 77; Monica Perez Trujillo & Stuart Ross, “Police Response to Domestic Violence: Making Decisions About Risk and Risk Management” (2008) 23:4 Journal of Interpersonal Violence 454; Enrique Gracia, Fernando García & Marisol Lila, “Police Involvement in Cases of Intimate Partner Violence: The Influence of Perceived Severity and Personal Responsibility” (2008) 14:6 Violence Against Women 697; Enrique Gracia, Fernando García, & Marisol Lila, “Police Attitudes Toward Policing Partner Violence Against Women: Do they Correspond to Different Psychological Profiles?” (2011) 26:1 Journal of Interpersonal Violence 189.

<sup>185</sup> Carmen Gill, Mary Ann Campbell, & Dale Ballucci, “Police Officers’ Definitions and Understandings of Intimate Partner Violence in New Brunswick, Canada” (2021) 94:1 The Police Journal 20.

<sup>186</sup> *Ibid* at 8-10.

<sup>187</sup> Mary Ann Campbell, Carmen Gill, & Dale Ballucci, “Informing Police Response to Intimate Partner Violence: Predictors of Perceived Usefulness of Risk Assessment Screening” (2017) 33 J Police Crim Psych 175 at 181 [Campbell, Gill, & Ballucci].

<sup>188</sup> An Garda Síochána, *supra* note 103.

Following the implementation of the coercive control offence in England and Wales, a study specifically examined the impact of training police officers on the dynamics of coercive control, including gathering and recording evidence in relation to coercive and controlling behaviour. The study found that the training resulted in a 41% increase in arrests for coercive control.<sup>189</sup> However, the training was only associated with an increased relative arrest rate for approximately eight months and began to decline thereafter, suggesting that the training only had short-term benefits. Nevertheless, the data at least suggest police training on FV, IPV, and coercive control may assist officers in the identification and enforcement of coercive control. As Walklate, Fitz-Gibbon, and McCulloch have argued:

The implementation of the new offence is reliant on a police officer's ability to identify the potential presence of coercive and controlling behaviour, elicit information on a series of abusive events from the victim and correctly assess that behaviour, in terms of laying charges. This requires a reframing of an officer's typical approach from responding and taking stock of crime 'incidents' as isolated events towards looking to a series of interrelated events and the harm that flows from these.<sup>190</sup>

Another area of research that has received significant attention to assist police officers in making better decisions regarding victim safety, offender management, and identifying instances of FV and IPV is the use of risk assessment tools.<sup>191</sup> These tools provide police officers with a series of risk factors that help predict recidivism or prevent violence,<sup>192</sup> which have been shown to inform officers' perceptions of FV and IPV.<sup>193</sup>

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<sup>189</sup> Iain Brennan, "Policing a New Domestic Abuse Crime: Effects of Force-Wide Training on Arrests for Coercive Control" (2021) 31:10 Policing and Society: An International Journal of Research and Policy 1153 at 1163.

<sup>190</sup> Walklate, Fitz-Gibbon and, McCulloch, *supra* note 15 at 121.

<sup>191</sup> See e.g., Melissa Northcott, "Intimate Partner Violence Risk Assessment Tools: A Review" (n.d.), online (pdf): *Department of Justice* <[www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12\\_8/rr12\\_8.pdf](http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12_8/rr12_8.pdf)> [Northcott].

<sup>192</sup> *Ibid* at 5-6.

<sup>193</sup> Ballucci, Gill, & Campbell, "The Power of Attitude: The Role of Police Culture and Receptivity of Risk Assessment Tools in IPV Calls" (2017) 11:3 Policing: A Journal of Policy and Practice 242 [Ballucci, Gill, & Campbell]; Amanda L Robinson, Andy Myhill, & Julia Wire, "Practitioner (Mis) Understandings of Coercive Control in England and Wales" (2018) 18:1 Criminology & Criminal Justice 29; Amanda L Robinson, Gillian M Pinchevsky, & Jennifer A Guthrie, "A

Examples of risk assessment tools used in Canada include the Ontario Domestic Assault Risk Assessment (ODARA), the Domestic Violence Risk Appraisal Guide (DVRAG), the Spousal Assault Risk Assessment Guide (SARA), the Domestic Violence Screening Inventory (DVS), the Danger Assessment (DA), and the Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER).

However, their use has important limitations. First, police officers who conduct assessments often lack the necessary qualifications and training to ensure accurate assessments.<sup>194</sup> There are currently “no professional standards for (a) the minimal qualifications of those conducting the assessments; (b) ‘best practices’ for applying the assessments; (c) training of the assessors; and (d) evaluation and monitoring of the assessments.”<sup>195</sup> Second, an important factor to consider is influencing police officers’ attitudes toward using these tools in their work.<sup>196</sup> For example, in a recent Canadian study, only 66% of a sample of 159 Canadian police officers reported having prior experience using some form of risk assessment tool to inform their IPV intervention,<sup>197</sup> though nearly 70% were open to using such tools.<sup>198</sup> However, nearly a third indicated they would not use IPV risk assessment tools even if trained to use them.<sup>199</sup> Third, despite many IPV risk assessment tools available, insufficient empirical evidence is available to conclude which tool is best.<sup>200</sup> Fourth, a systematic review of contemporary risk assessment tools revealed that there is limited empirical evidence evaluating risk assessment tools in FV and IPV contexts.<sup>201</sup> Moreover, the review demonstrated only modest postdictive and predictive validity, with limited evidence for the superiority of IPV-specific risk assessment tools over general violence ones. Fifth, important yet often overlooked information in risk assessment tools

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Small Constellation: Risk Factors Informing Police Perceptions of Domestic Abuse” 2016) 28:2 Policing and Society 189.

<sup>194</sup> Northcott, *supra* note 191 at 14; Campbell, Gill, & Ballucci, *supra* note 187 at 182.

<sup>195</sup> Randall Kropp, “Intimate Partner Violence Risk Assessment and Management” (2008) 23:2 Violence Vict 202 at 212.

<sup>196</sup> Ballucci, Gill, & Campbell, *supra* note 193.

<sup>197</sup> Campbell, Gill, & Ballucci, *supra* note 187 at 181.

<sup>198</sup> *Ibid* at 182.

<sup>199</sup> *Ibid*.

<sup>200</sup> Northcott, *supra* note 191 at 15.

<sup>201</sup> Tonia L Nicholls, “Risk Assessment in Intimate Partner Violence: A Systematic Review of Contemporary Approaches” (2013) 4:1 Partner Abuse 76 at 77.

is the victim's accuracy in predicting re-victimization risk.<sup>202</sup> Some evidence suggests that using risk assessments alongside victims' assessments may yield more accurate risk prediction than either approach alone.<sup>203</sup> Finally, it is questionable whether currently available risk assessment tools developed to predict the risk of physical violence can be reliably used to predict more subtle forms of abuse, like coercive control.<sup>204</sup> Most available risk assessment tools in Canada do not gather the necessary information relevant to coercive control.<sup>205</sup> Conversely, the U.K. has developed the Domestic Abuse, Stalking and Harassment, and Honour Based Violence (DASH) risk assessment, with research suggesting it may help in identifying coercive control.<sup>206</sup> However, applying the DASH risk assessment has been controversial, with some expressing serious concerns about its validity, reliability, and utility.

First, it has been argued that the DASH risk assessment tool was widely adopted in the U.K. without being subject to sufficient empirical research.<sup>207</sup> One study conducted after the DASH was adopted found that the DASH questions contributed nearly nothing to the predictive performance of identifying high-risk victims.<sup>208</sup> Similarly, another study assessing the performance of the DASH found that it performed poorly in assisting police officers in identifying victims and offenders at high risk of

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<sup>202</sup> Lauren Bennett Cattaneo et al, "Intimate Partner Violence Victims' Accuracy in Assessing their Risk of Re-abuse" (2007) 22 *Journal of Family Violence* 429.

<sup>203</sup> Jennifer K Connor et al "Risk Assessments by Female Victims of Intimate Partner Violence: Predictors of Risk Perceptions and Comparison to an Actuarial Measure" (2001) 26:12 *J Interpers Violence* 2517.

<sup>204</sup> Amanda L Robinson et al, "Risk-Led Policing of Domestic Abuse and the DASH Risk Model" (2016) at iii, online (pdf): *College of Policing* <library.college.police.uk/docs/college-of-policing/Risk-led-policing-2-2016.pdf> [Robinson]; Barlow & Walklate, *supra* note 95.

<sup>205</sup> Carmen Gill & Mary Aspinall, "Understanding Coercive Control in the Context of Intimate Partner Violence in Canada: How to Address the Issue Through the Criminal Justice System" (2020) at 25-32, online (pdf): *Office of the Federal Ombudsman for Victims of Crime* <www.victimfirst.gc.ca/res/cor/UCC-CCC/Research%20Paper%20on%20Coercive%20Control%20-%20April%2020.pdf>.

<sup>206</sup> Andy Myhill & Katrin Hohl, "The 'Golden Thread': Coercive Control and Risk Assessment for Domestic Violence" (2019) 34:21-22 *J Interpers Violence* 4477.

<sup>207</sup> Emily Turner, Gavin Brown, & Juanjo Medina-Ariza, "Predicting Domestic Abuse (Fairly) and Police Risk Assessment" (2022) 31:3 *Psychosocial Intervention* 145 at 146 [Turner, Brown & Medina-Ariza].

<sup>208</sup> *Ibid* at 151-53.

re-victimization and re-offending, respectively.<sup>209</sup> Model-based predictions based on machine learning of police administrative datasets have also outperformed the officer-administered DASH questionnaire in identifying victims at the highest risk of harm.<sup>210</sup> While another recent study did not assess the validity of the DASH tool itself, it found that only four individual risk factors contained in the DASH were significantly associated with increased risk of recidivism within a 12-month period: (1) criminal history, (2) problems with alcohol, (3) separation, and (4) being frightened.<sup>211</sup> Moreover, only “criminal history” and “separation” were significantly able to predict the recidivist group compared to the non-recidivist group. Therefore, only a limited number of individual risk factors contained within the DASH held predictive recidivism validity. Out of the risk factor items analyzed, 21 were found to be unable to differentiate between non-recidivist and recidivist perpetrators.<sup>212</sup> Second, some have raised concerns with the wording and structure of the DASH.<sup>213</sup> Third, there is inconsistency in how police officers apply the DASH.<sup>214</sup> It is still unclear whether the poor performance in the previously mentioned studies assessing the DASH found poor construct validity (i.e., the tool focuses on the wrong risk factors) or whether the problem is with data collection by police using the instrument. Thus, there could still be issues regarding when and how police apply the tool even if the DASH is shown to have appropriate construct validity, thus directly affecting its utility in practice.

Consequently, while extensive research has examined the use of risk assessment tools to assist frontline officers in intervening in cases involving FV and IPV, further research is required to create tools tailored to the latest understanding of coercive control that can be effectively put into practice.

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<sup>209</sup> Emily Turner, Juanjo Medina, & Gavin Brown, “Dashing Hopes? The Predictive Accuracy of Domestic Abuse Risk Assessment by Police” (2019) 59:5 *Brit J Criminol* 1013 at 1028.

<sup>210</sup> Turner, Brown & Medina-Ariza, *supra* note 207 at 151.

<sup>211</sup> Louise Almond et al, “Exploration of the Risk Factors Contained within the UK’s Existing Domestic Abuse Risk Assessment Tool (DASH): Do these Risk Factors have Individual Predictive Validity Regarding Recidivism?” (2017) 9:1 *Journal of Aggression, Conflict and Peace Research* 58 at 58.

<sup>212</sup> *Ibid* at 63-65.

<sup>213</sup> Robinson, *supra* note 204 at 1-2; Turner, Brown & Medina-Ariza, *supra* note 207 at 146.

<sup>214</sup> Robinson, *ibid*.



Similar attention should also be given to lawyers, with possible amendments to the Federation of Law Societies of Canada's *Model Code of Professional Conduct*.<sup>215</sup> Currently, FV, IPV, and coercive control are not addressed in the *Model Code*, likely because law societies do not consider them a legal ethics issue. However, if the law is to be viewed as an acceptable avenue for addressing coercive control, lawyers must consider their role and professional obligation through its lens.<sup>216</sup> Therefore, amendments to the *Model Code* have been proposed to improve the handling of coercive control during legal proceedings.<sup>217</sup> These amendments include (1) providing a definition of coercive control within the *Model Code*, (2) ensuring that the harm caused by coercive control can extend to a victim's child who may be a secondary victim, (3) that a lawyer must not assist the perpetrator in continuing a pattern of coercive control through the use of the legal process, and (4) that coercive control that is either ongoing or increasing in severity can indicate "serious psychological harm" for the purpose of the "future harm exception" to disclose privilege information.<sup>218</sup> These will ensure that lawyers understand how coercive control operates and thus respond more effectively, whether within a civil or criminal context.

Finally, the federal government should begin tracking cases of coercive control through official police records and self-report data like the U.K. to better understand its prevalence in Canada and continuously evaluate its legislation with ongoing research regarding its effectiveness in practice.

## VI. CONCLUSION

While the understanding of coercive control and its role in FV and IPV is not new, there has recently been an emerging movement toward its criminalization in various jurisdictions. Much of the current literature has debated the potential benefits and drawbacks of criminalizing coercive control. However, the current lack of empirical evidence examining the viability of a coercive control offence makes it challenging to draw any

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<sup>215</sup> Federation of Law Societies of Canada, *Model Code of Professional Conduct*, Ottawa: Federation of Law Societies of Canada, 2022 [Model Code].

<sup>216</sup> Deanne Sowter, "Looking at Legal Ethics Through the Lens of Family Violence" (2 March 2021), online: <[www.slaw.ca/2021/03/02/looking-at-legal-ethics-through-the-lens-of-family-violence/](http://www.slaw.ca/2021/03/02/looking-at-legal-ethics-through-the-lens-of-family-violence/)>.

<sup>217</sup> Deanne Sowter, "The Future Harm Exception: Coercive Control as Serious Psychological Harm and the Challenge for Lawyers' Ethics" (2021) 44:2 Dal LJ 1.

<sup>218</sup> *Ibid* at 35-37.

conclusive inferences regarding its merits or shortcomings. As such, this article did not argue that Canada should enact criminal legislation against it. Instead, it contributed to the discussion on coercive control by examining how coercive control has been addressed legislatively abroad to see how it could be better addressed legislatively in Canada.

A review of the current literature and Canadian law reveals that there are inconsistent definitions of FV, IPV, and coercive control. This inconsistency creates significant obstacles in developing uniform legal definitions across Canada and understanding how coercive control fits within the broader constructs of FV and IPV. Moreover, an international comparative analysis of legislation against coercive control demonstrates that there is no uniform approach to addressing it via criminal law. More importantly, limitations to the proposed Canadian criminal bills against coercive control have been raised. These findings create challenges in conceptualizing how a coercive control offence could be best legislated in Canada, including its definition, *actus reus*, *mens rea*, frequency of the behaviour required, punishment, and whom it should target. Nevertheless, three recommendations were proposed to ensure that criminal legislation against coercive control in Canada has the desired effects.

First, having clear, well-defined, and consistent definitions of FV, IPV, and coercive control in law will help ensure that the legislation holds up to constitutional scrutiny and is applied uniformly across Canada. It will also ensure a greater understanding of what behaviours are being captured, who the perpetrators and victims are, and how coercive control fits within the broader constructs of FV and IPV.

Second, given Parliament's recent interest in criminalizing coercive control, the examination of the implementation of a coercive control offence or a broader FV or IPV offence should be included in the national IPV prevention strategy proposed under Bill S-249. This will ensure that Parliament can make better-informed decisions regarding the most effective approach to addressing coercive control and the broader issues of FV and IPV in Canada.

Third, there needs to be robust implementation and evaluation plans that come with any law addressing FV, IPV, and coercive control. As researchers eloquently noted:

Put simply, the law does not exist in a vacuum. Laws require interpretation and

implementation. Thus, when new offences are created, demands and expectations for the wider criminal justice process, from the front-line police officer, to the prosecutor, to the judge, are also created.<sup>219</sup>

Therefore, while more research is needed to establish its efficacy in practice, this article cautions against the likelihood that adding a new criminal offence on its own will have a meaningful effect in helping address the larger issues of FV and IPV. Other strategies addressing this hidden epidemic beyond adding a new criminal offence should be seriously considered. These include (1) ensuring adequate training of all police officers, lawyers, and judges on the dynamics of coercive control, (2) developing better risk assessment tools to assist frontline officers, (3) making amendments to the *Model Code of Professional Conduct* and the current conceptualization of Canadian legal ethics, and (4) begin tracking cases of coercive control.

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<sup>219</sup> Barlow, *supra* note 164 at 161.