

Brief on the Criminalization of Coercive Control in Canada Through a Sexualized Violence Lens

Prepared by the Ending Violence Association of Canada for submission to the Department of Justice

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About EVA Canada

The [Ending Violence Association of Canada](#) (EVA Canada) is a national, non-profit organization that works to amplify the collective voice of those who believe it is possible to end sexual and gender-based violence. Through research, policy-change, and advocacy, EVA Canada is building and expanding national coordination to address and respond to sexual violence. EVA Canada works collaboratively with gender-based violence organizations from coast to coast to coast, and serves as an umbrella organization for provincial/territorial sexual violence networks, as well as other community-based organizations committed to ending sexual violence.¹

Introduction

The criminalization of coercive control in Canada is a complex issue requiring careful consideration. An understanding of sexual violence (SV) within the context of coercive control is an important element that is often overlooked. To date, SV within the context of coercive control remains understudied and tends to be thought of as an addendum to other types of abuse (Logan et al., 2013). However sexual violence has its own role within coercive control and fully understanding this role is fundamental; there cannot be a complete understanding of coercive control without understanding the role of sexual violence (Logan et al., 2013). This brief will focus on bringing in a sexualized violence lens to the conversation on criminalizing coercive control.

Using the lens of sexualized violence, this brief will address the following questions posed by the Department of Justice: What are the potential positive or negative impacts of a coercive control offence? What are your views on how a coercive control offence should be constructed, in light of existing models in United Kingdom, Scotland, Ireland and New South Wales (links to this legislation are included below)? What are the indicators of coercive control based on your experience and/or research?

Potential Impacts of Criminalizing Coercive Control

There are several impacts, both positive and negative, that could arise in response to the criminalization of coercive control in Canada. In terms of positive impacts, criminalizing coercive control could represent a potential paradigm shift in the criminal justice system's understanding of gender-based violence within the context of coercive control, moving away from its current incident-based approach (e.g., where acts of violence are considered discrete incidents) toward an understanding of the violence as a pattern that is ongoing, involving many abusive tactics,

¹ Although this brief is informed by the experiences of our member organizations in the sexual violence sector, our recommendations may not entirely reflect the official views of all of EVA Canada's member organizations. Any information about the official position of EVA Canada's member organizations should be directed to specific groups or organizations.

and resulting in cumulative harms (Palmer, 2020). By recognizing that gender-based violence is not limited to physical violence, and by recognizing that gender-based violence generally manifests as patterns of control over time, this shift would better reflect the reality of survivors of domestic violence, intimate partner violence and sexualized violence. This could open additional avenues for survivors, such as earlier access to protection orders.

Further, this shift may expose significant aspects of sexualized violence that are not visible when the focus remains on identifying individual incidents of non-consensual sexual acts within relationships. Sexualized violence within the context of coercive control can be described as *chronic sexual violation* which refers to the gradual chipping away of a victim's sexual autonomy over time often using insidious tactics (Palmer, 2020). As Palmer (2020) writes: "The routinised nature of much chronic sexual violation—the nightly rapes, constant groping, denial of privacy, and dictation by one person of whether, when and how sex should take place—operates to compel the victim's obedience in general by instilling the sense that she has no real control over her sexual choices and that it is futile to attempt to assert her own sexual desires." In the absence of a coercive control offence, isolating the ongoing incidents can obscure the gravity and strategic nature of chronic sexual violation.

Criminalizing coercive control could also have negative impacts and lead to potential unintended consequences. We are particularly concerned that criminalization will represent the government's primary strategy to prevent and respond to coercive control. Criminal justice responses should only be, at most, one element of a broader strategy. It is widely acknowledged that the current system often does not work for survivors of gender-based violence, and those who have experienced sexual assault in particular. Only a small percentage of survivors of sexualized violence (5%) report their sexual assault to the criminal justice system. Of those, an [even smaller percentage](#) of cases lead to a conviction. We also know that those who are at higher risk of experiencing sexualized violence, such as Indigenous women, Black and racialized women, women with disabilities, precarious immigration status, or members of the 2SLGBTQIA+ community are also likely to be disproportionately criminalized (see Duhaney, 2022). These populations are also more likely to have negative interactions with the criminal justice system. For example, in a recent Australian study 2SLGBTQA+ survivors of coercive control indicated being reluctant to engage with the criminal justice system due to long-standing experiences of discrimination, and perceptions that the criminal justice system does not take violence within same-sex relationships seriously (Reeves et al., 2023). The concerns of marginalized populations were reflected in the [Mass Casualty Commission Report](#) (2023) which called for the *de-centering* of criminal justice system responses to gender-based violence, in order to, instead, centre survivors' wellness and safety.

Moreover, we are concerned about the implementation of a coercive control offence by law enforcement and other actors within the criminal justice system. Coercive control is a nuanced concept that, by nature, can be difficult to identify. Considering the number of existing

issues around sexual assault investigations and prosecution, it will likely be difficult for police and the system to appropriately handle the even more nuanced cases of sexual coercion. As it is, cases of sexual assault are being ‘unfounded’ by the police in high numbers (Murphy-Oikonen et al., 2022), and even the ones that make it to trial are often [rife with misconceptions, myths, and stereotypes](#). Prosecutors and judges’ lack of a nuanced understanding of sexualized violence was recently recognized by [Bill C-3](#), which mandated ongoing training for federally-appointed judges. Knowing that many survivors of sexualized violence experience revictimization in their interactions with the criminal justice system, and especially those whose intersecting identities are marginalized, the government must ensure that this new legislation does not replicate these existing systemic flaws.

Lessons Learned from Existing Models in England, Wales, Scotland, and Australia

The following lessons learned from existing international models can provide guidance on improving the current Canadian Bills ([C-202](#) and [C-332](#)), as they do not adequately correspond to the reality of sexual coercion.

United Kingdom (England and Wales only)

Research on the United Kingdom (UK) model shows that police officers are often failing to identify coercive control, particularly in cases of sexual coercion due to enduring gender stereotypes. Myhill et al. (2022) write that stereotypical constructions of gender trivialise the woman’s disclosure of sexual coercion and normalise male sexual entitlement, positioning women as ‘gatekeepers’ to sex, and also de-contextualising consent from gendered power inequalities, including the lived consequences that refusing sex might incur. This points to the importance of crafting this legislation in a way that captures the realities of survivors of sexual coercion, as well as ensuring that police officers have the necessary expertise and self-awareness to recognize it.

Furthermore, the definition of who can be a victim of coercive control in intimate partner relationships in the UK was restricted only to current partners or resident ex-partners, which research has found to be problematic (Myhill et al., 2022). Considering that abuse can continue in a myriad of ways after a separation and that the months post-separation can be a period of heightened risk for survivors (Spearman et al., 2023), an offence in Canada must at the very least include non-resident ex-partners. In fact, to better reflect the reality of sexual coercion, there is a need to explore an even broader definition of who is impacted by coercive control. Sexual coercion, which manifests in relationships as chronic sexual violations, extends beyond intimate partners. “Chronic sexual violation... requires some kind of ongoing relationship as a context (such as a friend, family member, classmate, co-worker, manager or other acquaintance) but not necessarily an intimate partnership” (Palmer, 2020). Not only does

sexual coercion extend beyond intimate partner relationships and beyond the household, it is also present in online environments.

Scotland

Scotland's approach to criminalizing coercive control differed from that of England and Wales in that it notably shifted the focus away from needing to prove that there was a 'significant impact' on the victim towards looking at the problematic behaviours of the perpetrator. This shifts the onus of proving harm away from the victim and onto the perpetrator and moves the narrative away from scrutinizing and blaming the victim. From what we know of sexual assault cases in Canada, cross-examinations of the victim that require them to reveal the details of their lives, their choices and their trauma, can be grueling and harmful. Survivors react differently to harm and trauma, and many, in particular those who hold intersecting marginalized identities, do not fit the mould of the perfect victim (Gavey, 2018). We are concerned that the proposed legislation's focus on proving the impact on the victim could be a breeding ground for myths and stereotypes, thereby re-victimizing survivors.

Australia (Queensland)

Similar to Canada, Australia has a large Indigenous population and also struggles with systemic racism. While a few different jurisdictions in Australia have implemented coercive control legislation, Canada could perhaps benefit most from an approach similar to that of Queensland which decided to first engage in wider systemic reforms prior to introducing a coercive control offence, including an inquiry into domestic violence policing. Queensland adopted a two-stage process of legislative reform culminating in the introduction of coercive control legislation. A primary driver of adopting a two-stage approach was to: "reduce the likelihood of unintended consequences occurring, specifically in relation to misidentifying the primary aggressor and mitigating risks for First Nations women and girls" (Beckwith et al., 2023).

Indicators of Sexualized Violence within the Context of Coercive Control

The indicators in this section represent perpetrators' behaviours, rather than their impacts on the victim. Although a host of behaviours could be named, in the interest of adding an angle that is often overlooked to the conversation, we focus here only on sexual coercion. Sexually coercive tactics are used by perpetrators alongside other coercive control behaviors to establish patterns of compliance within relationships (Mitchell-Raghavan, 2021).

Indicators of chronic sexual violation (Palmer, 2020):

- Frequent sexual assaults
- Denials of privacy

- Compelling the victim to watch and/or imitate pornography
- Diffuse and cumulative forms of pressure
- Sex that is ostensibly consensual but the manner of sex is not
- Sexual humiliation
- Reproductive coercion
- Abusive sexual behaviours that result in victims initiating sex in order to protect themselves

Other examples of coercive control related to sexual violence (Mitchell-Raghavan, 2021):

- Threatening to find another partner if the current partner refused sex
- Spreading rumors about a partner's sexuality if refused sex
- Ignoring or arguing against verbal requests to stop/change sexual activity
- Shaping partner's sexual behavior through punishing and rewarding techniques rather than force
- Sexual violation through intoxication or drugging, blackmail, or focusing on the victim's 'insufficiencies'.

Image-based sexual abuse as a means of coercive control (Henry et al., 2023):

- Pressure to take or share intimate images
- Non-consensual taking/sharing of intimate images
- Threats made to share intimate images
- Ever present threat that a partner or ex-partner could share intimate images with a person's friends, family etc. (survivors worry what their partners/ex might do with the images if they end the relationship or do not comply with their demands)
- Intimate images used to force survivors to stay in the abusive relationship
- Sending a survivor intimate photos of them as a "reminder" of the perpetrator's power and control over them.
- Secretly recording someone to be able to later make threats to share the images, or share images in order to shame and humiliate them.
- Using intimate images as a means of degradation also connected to abusive partners' sense of entitlement to enact "punishment" within the context of an ongoing abusive relationship if the survivor resisted control.

Through these indicators it becomes apparent that coercive control creates a climate in which consenting to sexual activity may not always be possible, as refusing to comply may have consequences.

Recommendations

In light of the above-mentioned challenges and nuances regarding this legislation, we recommend that:

- 1) Legislation on coercive control must reflect an understanding of sexual coercion and the realities and needs of survivors of sexualized violence. Coercive control cannot be fully understood without an understanding of sexual coercion.
- 2) The federal government's response to coercive control must be much broader than creating a new criminal offence. In fact, efforts and investments should be made to *de-centre* carceral responses and to involve advocates in creating lasting solutions. In that vein, we urge you to implement the Mass Casualty Commission (2023)'s recommendations V.12 and V.13 to:
 - a) Create an expert advisory group with advocates from the gender-based violence sector to further examine the effectiveness of criminalizing coercive control.
 - b) Provide adequate and stable core funding to organizations in the gender-based violence advocacy and support sector, including sexual assault centres².
- 3) If moving forward with the criminalization of coercive control, certain pre-conditions must be established in order to mitigate some of its unintended consequences. These include³:
 - a) Training of criminal justice system actors
 - b) Public education on coercive control
 - c) Ample consultation with, and consideration of the barriers, impacts on, and needs of marginalized survivors
 - d) Building-in accountability mechanisms, including monitoring, data collection and a 2-year review
 - e) Providing free legal advice and representation to survivors of sexualized violence

Conclusion

We recognize the potential paradigm shift that could accompany the creation of a coercive control offence that would better reflect the experiences of survivors and open up new avenues for them. However, we urge the government to recognize the complexity of addressing coercive control, and sexual coercion in particular, and to take the time needed for

² See also recommendation #4 from the [study by House of Commons Standing Committee on Justice and Human Rights on controlling or coercive conduct within intimate relationships](#).

³ The first three are also named in recommendations #3 and #5 of the [study by House of Commons Standing Committee on Justice and Human Rights on controlling or coercive conduct within intimate relationships](#).

careful consideration of this legislation. Advocates must be involved at every step of the way, and every effort should be made to mitigate unintended consequences, especially impacting marginalized communities and survivors. Criminalization should at most be a small piece of the federal government's response to addressing coercive control, and priority should be given to preventative measures, and funding community-based services for survivors.

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