

# CRIMINALIZING COERCIVE CONTROL: UNINTENDED CONSEQUENCES & ALTERNATIVE APPROACHES



Coercive control is a term used to describe a pattern of abusive behaviours in intimate partner relationships that is based on tactics of intimidation, isolation, and control.<sup>1</sup> This can include, among others, behaviours such as isolating, stalking, threats, surveillance, psychological abuse, online harassment, and sexual violence. Coercive control is a highly gendered form of abuse, disproportionately experienced by women.

In recent years, there has been a movement worldwide to attempt to incorporate the realities of coercive control and intimate partner violence into law. Proponents of criminalizing coercive control claim legal recognition of this form of abuse would provide more recourse to safety for women and would improve assessments of intimate partner violence.<sup>2</sup> Legal expansion could also validate survivors' experiences and signal a societal recognition of the pervasive harms committed against women. However, it is important to consider the unintended consequences that might result from the creation of a new criminal offence, and the extent to which the law can effectively capture this form of violence.

## ANTICIPATED IMPACT OF THE CRIMINALIZATION OF COERCIVE CONTROL ON MARGINALIZED COMMUNITIES

The creation of a new criminal offence does not affect all survivors in the same way.<sup>3</sup> This is particularly notable for marginalized women, such as racialized and Indigenous women, sex workers or survivors with precarious migration status.

There is, however, limited research into the development or implementation of a coercive control crime through an intersectional lens that considers the complex layers of marginalization that may overlap to impact a survivor's experience, especially within the Canadian context.<sup>4</sup>

This paper is grounded in an understanding that the harms of the criminal legal system are disproportionately placed on Black, Indigenous, racialized and other marginalized groups. The specific harms of criminal laws and policing on these groups must be recognized.<sup>5</sup> The creation of any new offence deepens this impact. Moreover, in Canada, any efforts to criminalize coercive control must consider the ongoing impact of colonization on Indigenous communities, and the disproportionate violence against Indigenous women, girls, non-binary and trans peoples across the country.<sup>6</sup>

There are several specific challenges that may arise from a carceral response to coercive control that will have a stronger impact on these communities.

### **I. Challenges related to police identification of coercive control**

Marginalized communities have raised concerns that the potential overbreadth and vagueness of the concept of coercive control, and the subsequent range of behaviours which may be captured, could give greater leeway to police officers applying this concept through the existing lens of institutionalized stereotypes and racism.<sup>7</sup> The implementation of a new offence relies on law enforcement's understanding of the presence of coercive and controlling behaviour, within the specific context and dynamics of an intimate relationship.<sup>8</sup> If police are granted additional discretionary powers to arrest, it is therefore necessary that they have a clear understanding of how to recognize these behaviours, as well as an understanding of the systemic biases which may play into this recognition.

Training and tools for the assessment of coercive control must be developed for all judicial and law enforcement stakeholders (including police, Crowns, judges, defence lawyers), with an understanding of the systemic racial biases engendered within the police and legal systems.<sup>9</sup> Otherwise, there is risk of further over-criminalization of already systemically marginalized groups.<sup>10</sup>

Despite experiencing higher levels of victimization, racialized survivors often have less access to the credibility afforded to white survivors, who may align more closely with the notion of an “ideal” victim. Racialized women may face a double bind of being “unable to show that they have been a victim of coercive control while also being more likely to be viewed as engaging in coercively controlling behaviour themselves.”<sup>11</sup> Fears around the potential misidentification of women as the primary aggressors by police officers have been raised by Indigenous and Black communities, with the risk of greater over-incarceration of these groups.<sup>12</sup>

This risk is highlighted as well within the context of coercive control, where law enforcement officers may be able to make arrests without indications of physical violence or proof,<sup>13</sup> thus allowing for a wider role of discretion and interpretation. A comparison can be made to the policy of mandatory charging practices, which led to a significant increase in arrests of female survivors of intimate partner violence, particularly amongst racialized survivors.<sup>14</sup> The combination of mandatory charging policies with a new offence of coercive control is likely to lead to heightened negative impact on these communities.

### II. Criminalization may impact willingness to seek assistance

The criminalization of coercive control may affect the willingness of marginalized survivors to seek help.<sup>15</sup> One study examining the views of First Nations peoples in Australia within the debate about the criminalization of coercive control identified mistrust of police as a significant theme of criticisms.<sup>16</sup> A lack of trust in the police and law due to the history of systemic racism and harmful treatment means that First Nations women are less likely to voluntarily engage with the criminal legal system, resulting in an exclusion from the mechanisms of protection that may be available.<sup>17</sup> A response to coercive control that relies primarily on criminalization is likely to exclude racialized communities, which are less likely to voluntarily engage with the system.<sup>18</sup>

Increased police powers can also expose certain survivors, such as those living with precarious status or sex workers, to greater risk in their attempts to avoid police detection. For migrant women and sex workers, the risk of state intervention is high, and police are often seen as sources of violence.<sup>19</sup> Engagement with the police may trigger contact with the immigration system, leading to an increased risk of detention, deportation, or loss of status. For sex workers, increased criminalization increases danger by creating more opportunities for law enforcement actors to interfere and harass an already over-surveilled group.<sup>20</sup>

In addition to further criminalization, this interference can have ripple effects into families and lead to loss of primary care of children, housing, and income supports.<sup>21</sup>

This reticence to seek assistance is layered within the context of the unique forms of coercive control that can exist within these communities. For example, immigration status is often used as a mechanism of control and can manifest through threats to report lack of status to immigration authorities, or manipulations of information about status and preventing access to immigration documents.<sup>22</sup>

### III. Implications for sex workers

The establishment of a new criminal offence of coercive control also raises specific concerns for sex workers, stemming from the potential vagueness and overbreadth of the legal concept of coercion. Often, coercion is erroneously assumed to exist in sex work, leading to a persistent conflation of human trafficking with sex work. This conflation has been criticized for being both harmful to sex workers and to victims/survivors of trafficking.<sup>23</sup> The introduction of the concept of coercion into a standalone offence risks overbroad interpretations by police and prosecutors and invites increased surveillance and criminalization into the lives of populations already at higher risk of state intervention. This could be particularly harmful to sex workers who are Indigenous, Black, disabled, trans and/or face additional systemic barriers.

### ANTICIPATED IMPACT OF CRIMINALIZATION OF COERCIVE CONTROL ON WOMEN IN THE FAMILY LAW CONTEXT

There are many ways in which the criminal and the family law systems intersect. Often, in situations of intimate partner violence (IPV), this intersection can be traumatizing and difficult for a woman to navigate, whether she is the complainant or the accused in a criminal proceeding. Adding another criminal charge to the list of those that already exist to respond to aspects of IPV may exacerbate existing challenges for many women in family court.

#### **I. Negative impact on women's credibility in situations where no charges are laid, or no conviction is secured**

In cases involving allegations of IPV, criminal charges and, importantly, the lack of criminal charges, often become a focal point of the evidence in family court. Often, if a woman has not reported abuse to the police or the police have not laid charges or the abuser was not found guilty at trial, her claim of abuse in family court is not believed.<sup>24</sup>

The same is true for women who return to the abuser or stay in a relationship in which they are being abused. There are many reasons why a woman may not leave or report abuse to police, including but not limited to financial dependency on the

abuser, distrust of police, fear of losing the children, fear of increased violence, shame and isolation.<sup>25</sup> This is particularly true for women from marginalized communities and gender-diverse survivors who may not want to have any involvement with the criminal process because of systemic oppression and racism.<sup>26</sup> Unfortunately, not all legal system stakeholders in family court understand and appreciate this.

Adding another criminal offence will not address these concerns but may result in judges and others making negative credibility assessments about women who raise coercive control in their family law cases without having immediately left the relationship or reporting the violence to police.

#### **II. Negative impact on women's family law cases when they are charged with the offence**

Women who are charged are automatically at a disadvantage in family court when it comes to their credibility and the strength of their case. Abusers know how to manipulate the system and present themselves as the victim as opposed to the aggressor when police are called. They often use the threat of calling police and having a woman charged as a tactic to continue exerting power and control.<sup>27</sup> They will then use the existence of a charge or the involvement of police to gain a tactical advantage in family court.

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There is a concern that adding another criminal offence, particularly one that may pose challenges for police in terms of proper identification, is rife for manipulation by abusers.

One tangible example of how the offence could become a tool for further abuse and manipulation against women is in the context of parental alienation claims.<sup>28</sup> These claims are primarily made by men against women and, in cases that also involve allegations of IPV, are often raised by the alleged abuser.<sup>29</sup> Parental alienation has been viewed as a form of coercively controlling violence in family court.<sup>30</sup> There is a risk that abusers who use allegations of parental alienation in family court may use the offence of coercive control as another strategy to discredit and silence women by having them criminally charged.<sup>31</sup>

### III. Negative impact of involvement with child protection services

When police are called in situations involving IPV, they report their involvement with the family to the local child protection authorities. Adding a new criminal offence that applies in situations of IPV is simply adding another potential avenue for the children's aid society (CAS) to get involved in the life of a family. This can be extremely problematic for women, particularly women from marginalized communities who face increased scrutiny and oppression when engaged with this system.<sup>32</sup>

Involvement with CAS can have a detrimental impact on a woman's family law case. Family courts often rely heavily on the outcome of CAS investigations when making decisions about parenting arrangements for children.<sup>33</sup> Like the concerns about police not being able to properly identify and charge, there are similar concerns when it comes to CAS workers' ability to properly identify coercive control and its impact on a child. If they cannot properly identify the violence, they are unlikely to be able to verify protection concerns. This will then get used by the abuser in family court to discredit a woman's claim of abuse.



### SUMMARY OF FRAMEWORKS THAT MAY CAPTURE ELEMENTS OF COERCIVE CONTROL

#### I. Criminal Law

There is currently no criminal offence that fully encapsulates the breadth of coercive control as a form of intimate partner violence. However, the below offences capture certain elements of coercively controlling situations:

##### **a. Criminal Harassment (S.264)**

Section 264(2) of the Criminal Code is the offence closest to capturing the potential behaviours found in a pattern of coercive control. It states:

**264 (1)** No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

##### **Prohibited conduct**

**(2)** The conduct mentioned in subsection (1) consists of

- **(a)** repeatedly following from place to place the other person or anyone known to them;
- **(b)** repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;

- **(c)** besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
- **(d)** engaging in threatening conduct directed at the other person or any member of their family.

The behaviours covered include stalking behaviours such as repeatedly following someone, watching or engaging in threatening conduct directed at the other person. Notably, stalking is often understood as an element of coercive control and has been described as a “unique form of psychological dominance.”<sup>34</sup> Criminal harassment importantly recognizes harm that occurs during a longer duration, as well as recognizing the cumulative impact of repeated exposure to controlling behaviour.

The following offences in the Criminal Code could also be used to capture specific kinds of harm that may be present in situations of coercive control:

- a. Harassing communications (s.372(2)-(3))
- b. Uttering threats (s.264.1(1))
- c. Trespassing at night (s.177)
- d. Publication of intimate images without consent (s.162.1(1))
- e. Assault (ss.265-268)
- f. Sexual assault (ss.271-273)
- g. Forcible confinement (s.279)
- h. Theft (ss.322, 328-330 and 334) and extortion (s.346)<sup>35</sup>

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There are significant criticisms about the sufficiency of existing offences applying to situations of coercive control.

First, the majority of offences within the Criminal Code are incident based. This means that they do not capture a series or pattern of harms, a critical feature of coercive control.<sup>36</sup> Moreover, there is a focus on physical violence and harm, which may not always be present in situations of coercive control. Carmen Gill highlights as well that the current offences used in cases of coercive control are not able to capture the specific dynamics of control within an intimate partner relationship, thus “denying recognition that the context in which these offences are committed are often vastly different”<sup>37</sup> than in violence perpetrated by strangers. Finally, there are ongoing concerns regarding the challenges of successfully prosecuting and meeting the standard of proof required for offences like criminal harassment.<sup>38</sup> However, it is important to note that the concern of meeting this standard of proof and placing a heightened evidentiary burden on survivors exists with respect to a potential offence of coercive control.

### II. Civil Law alternatives to criminalization

Parenting orders: In 2021, the Divorce Act was amended to include a comprehensive, research-based definition of family violence that explicitly includes coercive control.<sup>39</sup> Family violence is a factor that must be considered by a judge when deciding who should make major decisions for a child,

how often each parent should spend time with a child and whether a parent should be permitted to move with a child.<sup>40</sup>

Several (but not all) provinces/territories have similar language in their legislation.

#### **Restraining orders/protection orders:**

Women can apply under existing provincial/territorial laws for an order that the abuser not come within a certain distance from them and/or their child and not communicate directly and indirectly with them and/or their child. Many provinces/territories have specific protection order legislation.<sup>41</sup> In some jurisdictions, this legislation includes elements of coercive control in the definition of violence.<sup>42</sup> Many provinces/territories also provide for this type of order in family law legislation. For instance, in Ontario, where there is no protection order legislation, a restraining order can be sought in family court in situations where a woman has reasonable grounds to fear for her physical and/or psychological safety.<sup>43</sup> Some courts apply the expanded definition of family violence as found in the Divorce Act when deciding these cases.<sup>44</sup> In British Columbia, the legislation governing family law protection orders includes a comprehensive definition of family violence.<sup>45</sup>

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**Exclusive possession orders:** Women can apply under existing provincial/territorial laws for an order in family court that they have exclusive possession of the family home following separation regardless of ownership.<sup>46</sup> Family violence is a factor that is often considered by the court when making these orders. For example, in Ontario, the legal test explicitly requires the court to consider the presence of violence generally and in relation to the best interests of the child.<sup>47</sup> In some provinces/territories, protection order legislation also allows for orders to be made for exclusive occupation of a family home in situations of violence.<sup>48</sup>

**Tort claims:** Women can bring a tort claim against their abuser when they have been subjected to coercive control. The Court of Appeal for Ontario has recently confirmed that these claims can be made on their own or in a family court case.<sup>49</sup> Liability for coercive control can be established under torts such as assault, intentional infliction of emotional distress and/or battery.<sup>50</sup> These claims can serve as an important mechanism for survivors to get financial compensation for the harm they were subjected to. For a survivor, this could be an important step toward minimizing some of the financial barriers experienced because of the violence, including poverty and lack of safe and affordable housing (though this benefit depends on the survivor actually being able to collect a financial award from the abuser, which can be a challenge, particularly where the abuser has few financial resources). These claims also have the potential to denounce and deter the behaviour.

### **Family Violence Temporary Resident**

**Permits:** A Family Violence Temporary Resident Permit (FV-TRP) issued by Immigration, Refugees and Citizenship Canada (IRCC) allows a victim of family violence to leave a relationship and to stay in Canada for a period of six months, with the possibility of renewal. FV-TRPs are available in limited circumstances to survivors of domestic abuse whose applications for permanent residence are contingent on remaining in their relationship (such as through a spousal sponsorship), as a means through which they can stay in Canada upon separating from an abusive partner.

In providing guidance to IRCC officers on the issuance of FV-TRPs, the Government of Canada states that family violence is not just physical violence, but may include psychological abuse, financial abuse or neglect.<sup>51</sup> The FV-TRP can thus potentially be used as a mechanism of protection for survivors of coercive control who do not have status from being deported upon leaving abusive relationships and may provide a temporary avenue to leave a coercively controlling relationship.



### CONCLUSIONS

The move towards criminalization of coercive control attempts to shed light on an insidious form of intimate partner violence and to provide increased avenues to safety for survivors. This is an important goal and worthy of significant consideration. Coercive control continues to be a misunderstood and poorly recognized form of violence for justice system actors, despite its often deadly consequences.

However, it is fundamental to consider the potential negative consequences of a carceral approach. The harms of a new offence are likely to be disproportionately experienced by survivors from marginalized communities who are already subject to historic and ongoing state oppression and over-incarceration. Without substantive training that considers the systemic oppression in the justice system for all actors, there is a significant risk of perpetuating this harm. This risk of harm ripples into family law proceedings, where women may face further negative impact on their credibility and engagement with child protection services. Any criminalization also risks alienating survivors who may be reticent to engage with police and the criminal legal system due to this heightened risk of harm and negative consequences in other systems such as family and immigration law.

It is therefore crucial to ensure that any new legislation does not perpetuate these systemic harms, and to meaningfully consult with communities marginalized due to race, Indigeneity, precarious migration status, disability and/or engagement with sex work to fully understand these consequences.

It is also important to examine how existing laws could be used and better implemented to respond to coercively controlling behaviors. This includes individual offences that exist within the Criminal Code, as well as responses which exist in the civil legal system such as in family law, immigration law and tort claim responses. These options may already be used to provide mechanisms to safety for survivors of coercive control.

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## ENDNOTES

- <sup>1</sup> Alanna Haist, “Criminalizing Coercive Control in Canada: Implications for Family Law” (2021) Luke’s Place at 12-13 (‘Luke’s Place Report’), online: <<https://lukesplace.ca/wp-content/uploads/2022/03/Stopping-Coercive-Control-by-Criminalization-Lukes-Place.pdf>>.
- <sup>2</sup> Ibid at 14.
- <sup>3</sup> Sandra Walklate & Kate Fitz-Gibbon, “Why Criminalize Coercive Control? The Complicity of the Criminal Law in Punishing Women through Furthering the Power of the State” (2021) 10:4 Int J for Crime, Justice & Social Democracy 1, at 4.
- <sup>4</sup> Lana Wells, Lianne Lee, Elena Esina, et al., “Building a case for using “Coercive Control” in Alberta: Discussion paper” (2020) The University of Calgary, Shift: The Project to End Domestic Violence.
- <sup>5</sup> See for example: Critical Resistance and INCITE! Women of Color Against Violence, “Statement on Gender Violence and the Prison Industrial Complex” (2001) online: INCITE! <<https://incite-national.org/incite-critical-resistance-statement/>>; Robyn Maynard, Policing Black Lives: State Violence in Canada from Slavery to Present (Winnipeg: Fernwood Publishing, 2017); Leigh S. Goodmark, “Should Domestic Violence be Decriminalized?” (2017) 40:53 Harv. J.L. & Gender 53; Mass Casualty Commission, “Turning the Tide Together: Final Report of the Mass Casualty Commission” (2023) 3 at p 387 (‘MCC Report’).
- <sup>6</sup> Luke’s Place Report at 76; Courtney Hobson, “The Contributions of First Nations Voices to the Australian Public Debate over the Criminalization of Coercive Control” (2023) bcad140 British Journal of Social Work (‘Hobson’).
- <sup>7</sup> Courtney K Cross, “Coercive Control and the Limits of Criminal Law” (2022) 56 UC Davis Law Review 195 (‘CK Cross’); Hobson at 11; See also House of Commons Standing Committee on Justice and Human Rights: Study on Bill C-247, 43rd Parliament, 2nd session, Brief, February 2021 (The Redwood) at 11, online: <<https://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11108103/br-external/Redwood-e.pdf>> noting that in the UK, charges have predominantly been brought against the main demographic of Muslim men.
- <sup>8</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 Criminology & Criminal Justice 115.
- <sup>9</sup> Robert Nonomura, Julie Poon, Katreena Scott, et al., “Coercive Control. Family Violence & Family Law Brief” (2021) (3). London, Ontario: Centre for Research & Education on Violence Against Women & Children.
- <sup>10</sup> Australian Women Against Violence Alliance, “Criminalization of Coercive Control: Issues Paper” (2021) online: <[https://awava.org.au/wp-content/uploads/2021/01/FINAL\\_-2021-AWAVA-Issues-Paper-Criminalisation-of-Coercive-Control.pdf](https://awava.org.au/wp-content/uploads/2021/01/FINAL_-2021-AWAVA-Issues-Paper-Criminalisation-of-Coercive-Control.pdf)> (‘AWAVA Issues Paper’).
- <sup>11</sup> CK Cross at 241.
- <sup>12</sup> Hobson; Walklate, Fitz-Gibbon & McCulloch.
- <sup>13</sup> CK Cross at 239.
- <sup>14</sup> CK Cross at 233-234.
- <sup>15</sup> House of Commons Standing Committee on Justice and Human Rights, 43rd Parliament, 2nd Session, Evidence, February 4 2021 (Jennifer Koshan) at 3, online: Government of Canada <<https://www.ourcommons.ca/Content/Committee/432/JUST/Evidence/EV11093829/JUSTEV18-E.PDF>>; AWAVA Issues Paper.
- <sup>16</sup> Hobson.
- <sup>17</sup> See also Walklate, Fitz-Gibbon & McCulloch at 121.
- <sup>18</sup> Goodmark at 73. See also MCC Report at 357.
- <sup>19</sup> See for example, House of Commons Standing Committee on the Status of Women, 44th Parliament, 1st Session, Evidence, April 20, 2023 (Elene Lam) at 2, online: Government of Canada <<https://www.ourcommons.ca/Content/Committee/441/FEWO/Evidence/EV12354009/FEWOEV60-E.PDF>>.
- <sup>20</sup> LEAF, “Sex Work Laws in Canada: A Position Paper” (2022) online: <<https://www.leaf.ca/wp-content/uploads/2022/04/LEAF-Sex-Work-Position-Paper.pdf>> (‘LEAF Sex Work Position Paper’).

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<sup>21</sup> Ibid; see also MCC Report.

<sup>22</sup> Janet Mosher, “Domestic Violence, Precarious Immigration Status and the Complex Interplay of Family Law and the Immigration Law” (2023) 35:1 Can J Fam L 297.

<sup>23</sup> LEAF Sex Work Position Paper at 20; Robyn Maynard, “Fighting Wrongs with Wrongs? How Canadian anti-trafficking crusades have failed sex workers, migrants, and Indigenous communities” (2015) 37:2, *Atlantis: Critical Studies in Gender, Culture and Social Justice* 40. See also Canadian Alliance for Sex Work Law Reform, “Submission on Bill S-224, An Act to amend the Criminal Code (trafficking in persons)” (2023) online: <<https://www.ourcommons.ca/Content/Committee/441/JUST/Brief/BR12554350/br-external/CanadianAllianceForSexWorkLawReform-e.pdf>>.

<sup>24</sup> Haley Hrymak & Kim Hawkins, “Why Can’t Everyone Just Get Along? How BC’s Family Law System Puts Survivors in Danger” (January 2021) online: <<https://womenslegalcentre.ca/wp-content/uploads/2021/01/Why-Cant-Everyone-Just-Get-Along-Rise-Womens-Legal-January2021.pdf>>; Jennifer Koshan, “Challenging Myths and Stereotypes in Domestic Violence Cases”, 35 Can J Fam L 33 (‘J Koshan’).

<sup>25</sup> Pamela Cross et al., “After she Leaves: A Resource Manual for Women’s Advocates” (2022) at pgs. 28 and 29 (a copy of which can be provided on request).

<sup>26</sup> J Koshan.

<sup>27</sup> See, e.g., Courtney K Cross, “Coercive Control and the Limits of Criminal Law”, *UC Davis Law Review* (2022), in which concerns were raised based on similar charging policies in place in parts of the United States at pg. 233.

<sup>28</sup> “Alienation” is a term that is used in family court to describe a situation where one parent intentionally disrupts and obstructs the other parent’s relationship with a child. The research suggests that in cases involving IPV, alienation claims are often made by the abuser as a shield against claims of violence, with the parental alienation claim becoming the focus of the court case instead of the violence claim. See, e.g., Learning Network, Issue 33, “The Misuse of Parental Alienation in Family Court Proceedings with Allegations of Intimate Partner Violence”, (February, 2021) online: <[https://www.vawlearningnetwork.ca/our-work/issuebased\\_newsletters/issue-33/Issue-33.pdf](https://www.vawlearningnetwork.ca/our-work/issuebased_newsletters/issue-33/Issue-33.pdf)>.

<sup>29</sup> Linda C Neilson, “Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?” (Fredericton: Muriel McQueen Fergusson Centre for Family Violence Research and Vancouver: The FRED Centre for Research on Violence Against Women and Children) at pg. 8, online: <<https://www.fredacentre.com/wp-content/uploads/Parental-Alienation-Linda-Neilson.pdf>>.

<sup>30</sup> See for example the case of *E v. V-E*, 2021 ONSC 7694 where the mother was found to be alienating, which was viewed as a form of controlling family violence (see paras 110-114).

<sup>31</sup> This concern was echoed by Julia R. Tomlie, a legal scholar from the University of Auckland in “Coercive control: To criminalize or not to criminalize?”, *Criminology & Criminal Justice*, Vol 18 at pg. 61.

<sup>32</sup> See for example the Ontario Human Rights Commission Report, “Interrupted childhoods: Overrepresentation of Indigenous and Black children in Ontario child welfare” which highlights the disproportionate rates of Indigenous and Black children in care, online: <<https://www.ohrc.on.ca/en/interrupted-childhoods#4.Research%20on%20racial%20disproportionality%20in%20child%20welfare>>.

<sup>33</sup> Wanda Wiegers, “The Intersection of Child Protection and Family Law Systems in Cases of Domestic Violence”, 35 Can J Fam L 183.

<sup>34</sup> Evan Stark & Marianne Hester, “Coercive Control: Update and Review” (2019) 25:1 *Violence Against Women* 81.

<sup>35</sup> House of Commons, “The Shadow Pandemic: Stopping Coercive and Controlling Behavior in Intimate Relationships” (April 2021) 43rd Parliament, 2nd session, online: <<https://www.ourcommons.ca/Content/Committee/432/JUST/Reports/RP11257780/justrp09/justrp09-e.pdf>> (‘The Shadow Pandemic’).

<sup>36</sup> MCC Report at 386; Luke’s Place Report; The Shadow Pandemic at 24.

<sup>37</sup> House of Commons Standing Committee on Justice and Human Rights: Study on Bill C-247, 43rd Parliament, 2nd session, Brief, February 2021 (Carmen Gill and Mary Aspinall) at 4, online: <<https://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11085796/br-external/Jointly1-e.pdf>>.

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<sup>38</sup> The Shadow Pandemic at 22.

<sup>39</sup> Divorce Act, RSC 1985, c 3 (2nd Supp) at s. 2, where “family violence” is defined 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 – and includes

(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; (violence familiale)

<sup>40</sup> See, e.g., *Barendregt v. Grebliunas*, 2022 SCC 22 at para 143: “The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator’s parenting ability is untenable.”

<sup>41</sup> Alberta, Manitoba, Newfoundland and Labrador, New Brunswick, Nova Scotia, Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan, Yukon.

<sup>42</sup> Jennifer Koshan, “Preventive Justice? Domestic Violence Protection Orders and Their Intersections with Family and Other Laws” 35 Can J Fam L 241.

<sup>43</sup> Family Law Act, RSO 1990, c F. 3 at s. 46(1); *Azimi v. Mirzaei*, 2010 CarswellOnt 4464.

<sup>44</sup> See, e.g., *K.D. v. K.S.*, 2022 ONCJ 73; *JK v. RK*, 2021 ONSC 1136.

<sup>45</sup> Family Law Act, SBC 2011, c 25 at s. 1 and s. 183(1).

<sup>46</sup> For example Alberta’s Family Property Act, RSA 2000, c F-47 at s. 19(1)(a), British Columbia’s Family Law Act, SBC 2011, c 25 at s. 90(2)(a) and Manitoba’s Family Maintenance Act, CCSM c F20 at s. 10(1)(b.2).

<sup>47</sup> Family Law Act, RSO 1990, c F. 3 at s. 24(3), see, e.g., *Trotta v. Chung*, 2022 ONSC 6465 where the court considered family violence under the best interests of the child part of the legal test.

<sup>48</sup> For example Alberta’s Protection Against Family Violence Act, SA 2000, c P-27 at s. 4(1).

<sup>49</sup> *Ahluwalia v. Ahluwalia*, 2023 ONCA 476 at paras 39-46.

<sup>50</sup> *Ibid* at paras 47-93; Mary Jo Maur, “Torts and Family Law: What’s new, What’s Old and How to Use It” 41 C.F.L.Q. 23.

<sup>51</sup> Government of Canada, Temporary resident permit (TRP) for victims of family violence, online: <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/permits/family-violence.html>>.



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