

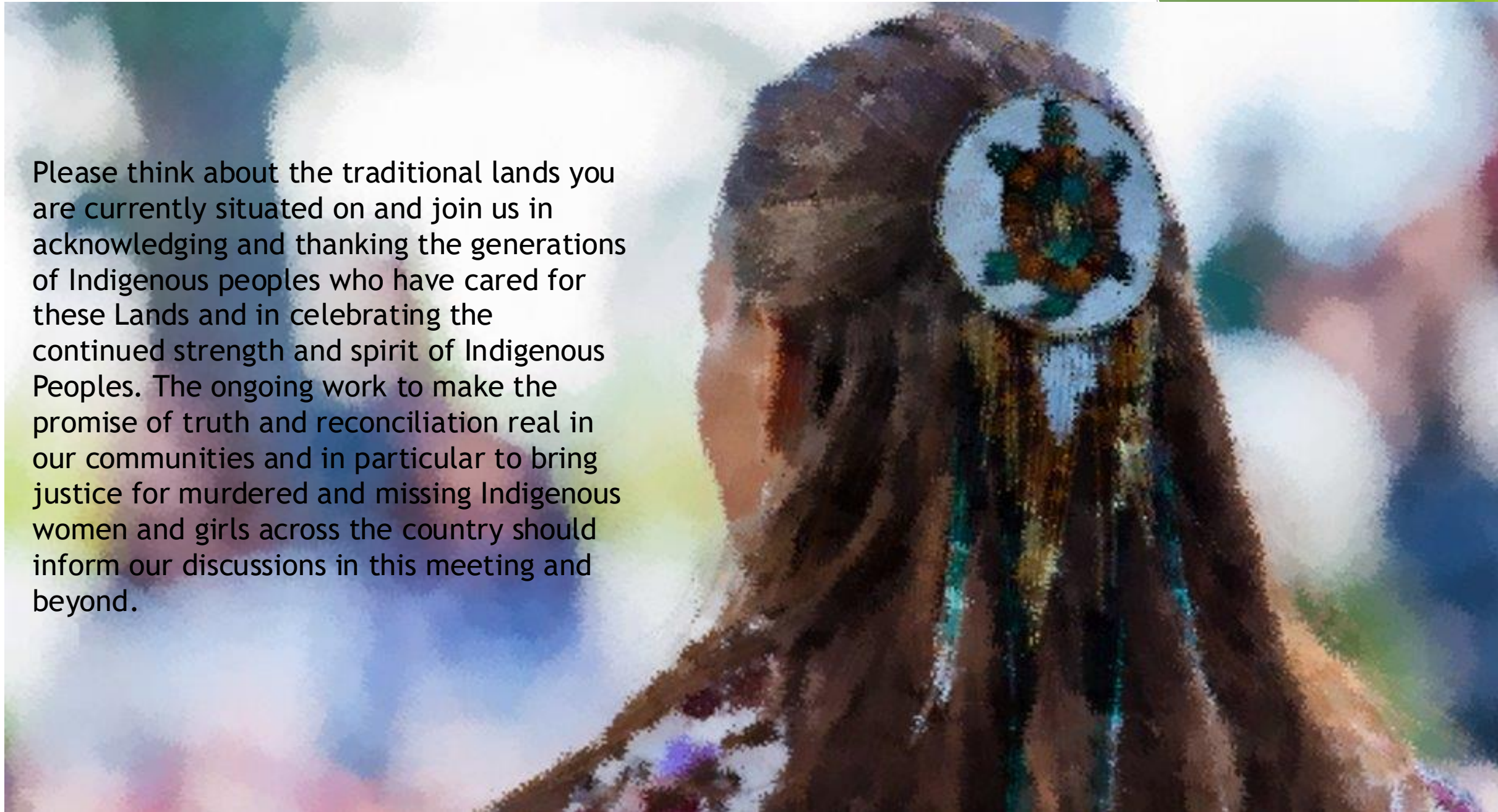
Criminalization of coercive control : recent developments

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Please think about the traditional lands you are currently situated on and join us in acknowledging and thanking the generations of Indigenous peoples who have cared for these Lands and in celebrating the continued strength and spirit of Indigenous Peoples. The ongoing work to make the promise of truth and reconciliation real in our communities and in particular to bring justice for murdered and missing Indigenous women and girls across the country should inform our discussions in this meeting and beyond.



Presentation plan

1. Coercive control: origin and definition
2. International context of criminalization
3. Bill C-332: An Act to amend the Canadian Criminal Code (controlling or coercive conduct)
4. Application challenges and other international findings



Coercive control :

▶ definition

What is « coercive control »?



Concept from sociology



Form of domestic violence conceived as an attack on fundamental human rights



Individualized tactics deployed over the long term



Gendered phenomenon

Coercition

“Use of force or threats to coerce behavior.”

Types of behavior:

- Violence
- Bullying
- Threats
- Denigration
- Harassment
- Humiliation

Control

“[...] forces obedience indirectly by depriving victims of essential resources and support networks; by exploiting them; or by dictating their own choices and imposing particular behaviors on them through rules aimed at daily activities”

Types of behavior:

- Isolation
- Deprivation
- Exploitation
- Imposition of rules

Behavior examples: coercion

- ▶ Physical and sexual violence
- ▶ Sexual humiliation
- ▶ Intimidation, threats, “gaslighting”
- ▶ Harassment
- ▶ Humiliation

Behavior examples: Control

- ▶ Isolation
- ▶ Maternity
- ▶ Mood swings, anger, threats
- ▶ Money
- ▶ Criticism, negation of perceptions
- ▶ Failure to respect rights, needs and opinions
- ▶ Unilateral decision making
- ▶ Transfer of responsibility on the victim

« When coercion and control occur together, [Evan Stark] argues, the result is a “condition of unfreedom” that is experienced as entrapment. »

Case #1

“Just before my office party, he forcefully grabbed my shoulders in front of the mirror. He told me that I had put on makeup like a ‘slut’. I begged him to stop. He said I wanted to impress someone. He continued no matter how much I told him it wasn't true, tried to reason with him, and told him that it was him I wanted to please. I was suffocating.

I ended up yelling at him and scratching his hand trying to free myself. He let go of me, calling me ‘crazy bitch’. During the evening, a colleague came to tell me that he was showing his scratch to everyone. He was asking my colleagues how I behaved at work, saying I was aggressive at home and he didn't know what to do about it anymore...” A - 51 YEARS OLD – SURVIVOR (SOS VIOLENCE CONJUGALE)

Case #2

- ▶ B is separated from an abusive spouse. B's ex set fire to his neighbors' car and threatened to do the same to B's car. During this same period, he also harassed her by sending her more than 60 messages in less than 24 hours. The police was called.
- ▶ In the following months, the ex-partner found other ways to harass B. He would order takeout and send it to her door in her name. He sent letters to the city council on his behalf. He came to the entrance to her street numerous times, just beyond the limit allowed by his release conditions.
- ▶ When B began working with our service, she was assessed as high risk for future violence. Her mental health was greatly affected. She had made several suicide attempts, seeing no way out of her nightmare.

Consequencies of coercive control

HEALTH

- ▶ Limitations on the autonomy and freedom of the person, causing psychological harm
 - ▶ Terror, depression, PTSD, feeling of helplessness, fear of annihilation, loss of self-esteem, loss of confidence in personal abilities, suicidality
- ▶ Various health problems linked to stress
 - ▶ Headaches, back pain, digestive problems, chronic health problems
- ▶ Physical injuries
- ▶ Death

DAILY

- ▶ Isolation
- ▶ Limited access to social life
- ▶ Limited power of action in the private life
- ▶ Difficulty or inability to work
- ▶ Economic dependence
- ▶ Parenting difficulties
 - ▶ Impact on relationship with children, loss of authority, loss of contact, difficult custody management

Criminalizing coercive
control: international

▶ context

Timeline

- ▶ Tasmania (Australia) - *Family Violence Act (2004) Tasmania*
- ▶ 2014: The Istanbul Convention (Council of Europe)
- ▶ 2015: England and Wales - ***Section 76 of the Serious Crime Act 2015***
- ▶ 2018: Scotland - ***Domestic Abuse (Scotland) Act 2018***
- ▶ 2018: Ireland - *Domestic Abuse (Ireland) Act 2018*
- ▶ 2022-2025: Australia
 - ▶ *New South Wales: Crimes Legislation Amendment (Coercive Control) Act 2022* (comes into force July 2024)
 - ▶ *Queensland: Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023* (comes into force 2025)
 - ▶ *Western Australia: tiered approaches ending in criminalization*
 - ▶ *South Australia: Criminal Law Consolidation (Coercive Control) Amendment Bill 2023* at the public consultation stage

WHY CRIMINALIZE?

- ▶ Bringing law closer victims' reality
- ▶ Notion of “course of conduct”: domestic violence as a set of behaviors repeated over time, as opposed to the single incident model
- ▶ Legislating against controlling and coercive behavior that is not captured by law

« Unfortunately, criminal law frameworks struggle to capture the real nature of this harm. Instead the focus is on isolated physical injuries that can be seen and where context is disregarded. »

Bettinson, 2016, about the Scottish context

WHY CRIMINALIZE? (...)

- ▶ Protect victims
- ▶ Coercive control has devastating effects on the lives of victims
- ▶ Coercive control is a predictor of future severe violence and homicide
- ▶ Law as a tool for law enforcement and judicial staff
- ▶ Law as a tool for deterrence

WHY CRIMINALIZE? (...)

▶ Symbolism

- ▶ Political positioning against gender-based violence
- ▶ Recognition of the reality of victims and improving confidence in the justice system



Criminalization of ▶ coercive control: the Canadian context

Coercive control in Canadian Law

Projects including the notion of coercive control

- ▶ *Amendment to the Divorce Act (2021)*
- ▶ *An Act to amend the Criminal Code and the Judges Act (violence against an intimate partner), assented to April 27, 2023*
- ▶ *Act amending certain laws and other texts accordingly (firearms), assented to December 15, 2023*

An Act to amend the Criminal Code (controlling or coercive conduct)

- ▶ *C-247 (Randall Garrison, NDP), 1st reading 5 Octobre 2020*
- ▶ *C-202 (Randall Garrison, NDP), 1st reading November 25, 2021*
- ▶ *C-332, (Laurel Collins, NDP), 1st reading in the Senate June 13, 2024, awaiting second reading*

« Domestic violence is a profound social problem. It is a scourge that disproportionately targets women and is rooted in antiquated **notions of control and inequality** that have no place in a civilized society. »

*Judge Galiatsatos,
R c Kalinics 2022 QCCQ 720*

“

I would rather be punched in the face than suffer years of emotional, verbal and psychological abuse. I have already contacted the police a few times regarding various situations, but they could do nothing other than speak to him and warn him. The police told me nothing could be done as long as he didn't physically harm me.

The effects and damage of emotional and psychological abuse are horrific and exhausting, both mentally and physically. I have been separated for four years and I am still trying to find peace and rebuild myself. This is very difficult to do when you are still experiencing abuse, but, with time and lots of help and support, it is possible. Passage of the bill would help.

”

Words of a victim reported by MP Michelle Ferreri (CPC), February 17, 2023,
at the second reading of Bill C-332

BILL C-322: act to amend the Canadian Criminal Code (controlling or coercive conduct)

Summary:

The text amends the *Criminal Code* to make it an offense to exercise coercive control over an intimate partner through combination, or any repeated instances, of any of the following acts:

- ▶ use violence against certain people or attempt or threaten to do so
- ▶ coercing or attempting to coerce the intimate partner to engage in sexual activity
- ▶ engaging in any other conduct the conduct that could reasonably be expected to cause the intimate partner to believe that the intimate partner's safety, or the safety of a person known to them, is threatened

THE INFRACTION

264.01 (1) Every person commits an offense who **repeatedly** engages in acts referred to in subsection (2):

(a) with intent to cause their **intimate partner** to believe that the intimate partner's safety is threatened; or

(b) being reckless as to whether that pattern could cause their intimate partner to believe that the intimate partner's **safety** is threatened.

Reckless

Actus Reus
1 Violence
2 Sexual coercion
3 Contextualized controlling behaviors

Intimate partner
criminal code: "Includes the current or former spouse

Mens rea
-Based on the Scottish model
-Objective criterion (3)
-Proof that the victim feared for their physical and/or psychological health not required

harassment)

Targeted acts

(2) Acts covered are any **combination** of the following acts or any **repetition** of one of these acts:

(a) using, attempting to use or threatening to use violence against, as the case may be:

(b) coercing or attempting to coerce the intimate partner to engage in sexual activity

(i) The intimate partner

(ii) A dependent child of the intimate partner under the age of 18

(iii) Another person known to the intimate partner

(iv) An animal in the care of the intimate partner

TARGETED ACTS (...)

(c) act in any other manner, including that referred to in the following subparagraphs, where the **conduct** could reasonably be expected to cause the intimate partner to believe that the intimate partner's safety, or the safety of a person known to them, is threatened:

Context: takes into account the nature of the relationship and the potential vulnerability of the intimate partner

The list of acts is:

- Non-exhaustive
- Based on international examples
- Based on 2023 Justice Canada's work on coercive control, including testimonies from victims

TARGETED ACTS (...)

(i) controlling, attempting to control or monitoring the intimate partner's actions, movements or social interactions, including by a means of telecommunication,

(ii) controlling or attempting to control the manner in which the intimate partner cares for any person under the age of 18 referred to in subparagraph (a)(ii) or any animal referred to in subparagraph (a)(iv),

(iii) controlling or attempting to control any matter related to the intimate partner's employment or education,

(iv) controlling or attempting to control the intimate partner's finances or other property or monitoring their finances

(v) controlling or attempting to control the intimate partner's expression of gender, physical appearance, manner of dress, diet, taking of medication or access to health services or to medication,

(vi) controlling or attempting to control the intimate partner's expression of their thoughts, their opinions, their religious, spiritual or other beliefs, or their culture, including the intimate partner's use of their language or their access to their linguistic, religious, spiritual or cultural community,

(vii) threatening to die by suicide or to self-harm.

Sentence

(4) Everyone who commits an offence under this section is

(a) guilty of an **indictable offence** and liable to imprisonment for a term of not more than **10 years**; or

(b) guilty of an offence punishable on **summary conviction**.

- Punishment reflects that of criminal harassment
- Sentence allows registration on the register of dangerous offenders



Application

- ▶ challenges

Concerns raised

The criminalization of domestic violence has a limited scope/may harm victims:

Reporting rates are low: the criminal justice system has a limited effect on protecting victims as, for a variety of reasons, they seldom denounce

Trauma: victims risk being heavily solicited, risk of re-victimization

Judicial violence: the law could be instrumentalized by abusers

Intersectionality: marginalized populations risk being overrepresented

Concerns raised (...)

The wording:

1. **The concept of coercive control is too narrow:** family, friends, institutional context, etc.
2. **The concept lacks clarity:** the wording's quality is linked to accessibility to the general public, operational ease, and respect for the rights of the accused

“A family member providing necessary support to an adult with a developmental disability, which could be misinterpreted as coercive control due to vague legislative language. »

Memory of Inclusiveness Canada
to the Standing Committee on
Justice

Concerns raised (...)

Operationalization may be difficult:

- 1) **Need for training for legal workers**
- 2) **Building proof:** difficult to identify the elements which constitute it, how to manage the gray areas?
- 3) **Administrative burden:** a need to build detailed files with a nuanced and complete understanding of the individual context risks neutralizing the law:
 - 1) Return to the use of other criminal code offenses
 - 2) Difficulty in bringing cases of coercive control to term

Application issues: Scotland and England

A mixed success

- ▶ Rate of use of new laws:
 - ▶ England: in 2021, 3% of recorded DV offenses under the new law
 - ▶ Scotland: in 2023, 6% of DV offenses under the new law

Application issues: Scotland and England (...)

In England

- ▶ Easier to apprehend crimes involving physical violence
- ▶ Difficulty differentiating between normal couple conflicts and coercive control, among other things due to workers' biases regarding "normality"
- ▶ Not enough staff/time to be able to put together the files
- ▶ Evidence relies mainly on the testimony of the victim

In Scotland

- ▶ Police officers confident in being able to put together cases, confident in their abilities
- ▶ Accustomed to a requirement for corroboration
- ▶ Diverse evidence (other than victim testimony) perceived as effective

Application issues: Scotland and England (...)

The importance of training legal workers

- ▶ Understanding of the phenomenon from police officers to judges is crucial
- ▶ Disadvantaged marginalized populations

Limitations of Criminal Law

- ▶ General challenges related to domestic violence

« [...] justice professionals were consistently identifying non-physical tactics used in domestic abuse, and some highlighted a concern that they were particularly poor at doing so in cases involving minoritized women.

In this context, culture was seen as obscuring the abuse in the eyes of many professionals, leaving the women increasingly vulnerable. »

Bettinson et al., 2024

Any questions ?



THANK YOU FOR YOUR ATTENTION

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