

**Brief submitted to the Standing Committee on Justice and Human Rights
Regarding Bill C-16, *An Act to amend certain Acts in relation to criminal and correctional matters (child protection, gender-based violence, delays and other measures)*
(Protecting Victims Act)**

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The Provincial Association of Transition Houses and Services of Saskatchewan (PATHS) is the member association for agencies that provide shelter and counselling services to survivors of intimate partner violence (IPV) in Saskatchewan. PATHS conducts research, delivers training for professionals, engages in advocacy, and serves as the collective voice for front-line IPV professionals in Saskatchewan.

PATHS and our member agencies support legislating a *Criminal Code* offence of coercive or controlling conduct toward an intimate partner.

We have written letters to the federal government since 2019, requesting that such a change be considered. In 2023, we provided a submission to the Department of Justice Canada regarding a potential coercive control offence in the context of intimate relationships (Giesbrecht, 2023). In that brief, we defined coercive control; described the need for a criminal offence, including evidence of support from IPV professionals; explained the risks to children, the connection between coercive control and domestic homicide, and gendered implications; and detailed considerations for assessing coercive control, delivering training for police and other professionals, public awareness, and evaluation and data collection, in addition to suggestions for the construction of a criminal offence of coercive or controlling conduct.

We are pleased to see the inclusion of a criminal offence of coercive or controlling conduct, as well as provisions regarding femicide, and other important amendments, included in Bill C-16, *An Act to amend certain Acts in relation to criminal and correctional matters (child protection, gender-based violence, delays and other measures)* (short title: Protecting Victims Act).

This brief will focus on potential amendments regarding coercion or control of an intimate partner.

Coercion or control of an intimate partner

264.01 (2) *Pattern of coercive or controlling conduct* contains a comprehensive description of coercive or controlling conduct that consists of any combination, or repeated instances, of any of the following acts: 1) using, attempting, or threatening violence; 2) sexual coercion; 3) and other conduct that could be reasonably expected to cause the intimate partner to believe that their safety, or the safety of anyone known to them, is threatened. “Safety” in this Bill includes psychological safety. This description acknowledges the nature of coercive and controlling conduct, where incidents on their own may appear inconsequential, but where the cumulative pattern causes harm. Importantly, the Bill will criminalize this pattern of conduct when it is perpetrated against an intimate partner, the partner’s child, a child in their care, another person known to the intimate partner, or the intimate partner’s animal. The inclusion of wording of “could reasonably be expected to cause the intimate partner to believe” allows coercive or controlling conduct to be criminalized without a requirement that the victim state their belief that their safety was threatened.

1. We recommend an amendment to the wording of 264.01 2 (Pattern of coercive or controlling conduct) (c):

Current wording:

“engaging in any other conduct — including conduct listed in any of the following subparagraphs — if, in all the circumstances, the conduct could reasonably be expected to cause the intimate partner to believe that the intimate partner’s safety, or the safety of anyone known to them, is threatened”

(Noting that safety also includes psychological safety, as per “(5) For the purposes of this section, and for greater certainty, a person’s safety includes their psychological safety.”)

Proposed amendment:

“engaging in any other conduct — including conduct listed in any of the following subparagraphs — if the intimate partner believed, or the conduct could reasonably be expected to cause the intimate partner to believe that the intimate partner’s safety, or the safety of anyone known to them, is threatened, or to cause the intimate partner to experience distress, disruption to the intimate partner’s life, or an adverse effect on the intimate partner’s day-to-day activities”

Such an amendment would expand this provision so that engaging in a combination, or repeated instances, of any of the forms of other conduct listed in the subparagraphs is considered criminal, if the victim states that they believe that their safety, or the safety of someone else (including their animal), is threatened, or they have experienced distress, disruption to their life, or an adverse effect on their day-to-day activities, or that the behaviour could reasonably be expected to cause the victim to believe that their safety, or the safety of someone else (including their animal), is threatened, or to experience distress, disruption to their life, or an adverse effect on their day-to-day activities. Expanding the wording to include distress, disruption, or adverse effects on day-to-day activities allows accountability for coercive or controlling conduct, regardless of whether the behaviour could be expected to cause victims to believe that there is a threat to safety.

2. We recommend an amendment to move the accused person’s manipulation of the victim’s vulnerabilities to section 264.01 2 (c) (as opposed to 3; Circumstances):

This section notes that “The circumstances referred to in paragraph (2)(c) include the nature of the relationship between the accused and the intimate partner, in particular whether the intimate partner is in a position of vulnerability in relation to the accused and whether the accused manipulated the intimate partner by targeting their vulnerabilities.”

Although this provides guidance on a contextual area that may be considered (as opposed to a mandatory element that must be present), we recommend removing this section and including the circumstances of vulnerability and the accused person’s manipulation of the victim’s vulnerabilities as another possible form of coercive or controlling conduct (i.e., viii under 2 (c), engaging in any other conduct). Moving this item to the list of other conduct keeps the focus on the behaviour of the perpetrator and limits the evaluation of the victim’s circumstances of vulnerability in the court’s determination of whether the perpetrator engaged in a pattern of coercive or controlling conduct.

3. We recommend an amendment to include protective orders for survivors of coercive or controlling conduct toward an intimate partner

Scotland employs what is known as a presumptive protection order model. The *Domestic Abuse (Scotland) Act* (2018; Explanatory Notes) “provides that the court is always required to consider whether to make a non-harassment order. An application by the prosecutor is not required to initiate this process. . . after hearing the prosecutor as well as the person, the court must make a non-harassment order unless it concludes that there is no need for a victim, or the children . . . to be protected by such an order.”

Bill C-16 could be amended to state that when a person is convicted of an offence under section 264.01 (coercive or controlling conduct), the court will make an order prohibiting the offender from contacting the intimate partner or any child or other person affected by the conduct, unless satisfied that the order is not necessary for the safety or protection of the victim, any child, other person, or animal affected by the conduct.

4. We recommend an amendment to include the establishment of training guidelines and programs for legal system professionals

As section 264.01 is set to come into force on the second anniversary of the Act receiving royal assent (or on an earlier day to be fixed by order of the Governor in Council), training for professionals must take place during this two-year period to ensure that service providers have completed training before the legislation comes into force.

Professionals who will require training on coercion or control of an intimate partner and the new offence include police (Royal Canadian Mounted Police, provincial police services, municipal police services, and First Nations police services), lawyers (including criminal defence lawyers, crown prosecutors, and family lawyers), and mediators. Training should also be made available for judges.

This training should include, but not be limited to, defining and understanding coercive and controlling conduct, including the range of behaviour and tactics employed by perpetrators; the

connection between coercive control and other forms of intimate partner violence; the connection between coercive control and intimate partner homicide (femicide); moving from an incident-based view of intimate partner violence to recognize patterns of coercive and controlling conduct; recognizing the cumulative harm of coercive and controlling behaviour and the impact on victims; cultural and intersectional factors that impact the perpetration and experience of coercive control; and practical skills, such as assessing risk, including risk for lethality; identifying the primary aggressor; interviewing survivors and accused perpetrators; gathering evidence; documenting patterns across multiple interactions or calls for service; trauma-and-violence-informed support for survivors; and cross-sectoral collaboration.

Bill C-16 could be amended at this stage to include a provision requiring the Minister of Justice to establish training guidelines and programs for police, lawyers (including prosecutors), mediators, and other legal system service providers regarding coercive and controlling conduct, in consultation with provinces/territories, police, intimate partner violence/coercive control experts, and organizations that work with victims/survivors, and to require monitoring and reporting on training implementation. Such an amendment could also direct the Minister of Justice to prepare and table an annual report detailing the implementation of guidelines and delivery of training related to coercive and controlling conduct.

References

Giesbrecht, C. J. (2023). *Submission to the Department of Justice Canada regarding a potential coercive control offence in the context of intimate relationships*. Provincial Association of Transition Houses and Services of Saskatchewan (PATHS).

<https://pathssk.org/wp-content/uploads/2024/03/C-Giesbrecht-PATHS-Submission-Potential-Coercive-Control-Offence-Oct-2023.pdf>

Government of the United Kingdom. (2018). *Domestic Abuse (Scotland) Act 2018*.

<https://www.legislation.gov.uk/asp/2018/5/part/1/enacted>