



REGROUPEMENT DES MAISONS
POUR FEMMES VICTIMES
DE VIOLENCE CONJUGALE

Tool 2



Family Law: Detection and Intervention
in Cases of

Coercive Control



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In addition to this toolbox, the Regroupement offers training on coercive control for social/legal professionals. Contact us for more details on the proposed modules and modalities.



The analogy of hostage-taking, sequestration or sectarian control is often used to describe the impact of coercive control on victims and their children.

It is useful to invite legal professionals to consider how forcefully police forces and the courts would respond to someone who took a stranger hostage, and strictly regulated how that person dressed, walked, talked, and spent their time or money.¹

Until recently, the courts gave little consideration to the impact of a mother's experience of conjugal violence on the children. Generally, only acts of parental violence on the child were considered, without taking into account that, by the mere fact of being present, the child was experiencing significant consequences of domestic violence.

Effective March 1, 2021, coercive control was incorporated as a key aspect of "family violence" in the Divorce Act section 2(1). Family violence is defined therein as any conduct, whether or not it constitutes a criminal offence,

- That is violent, or threatening, or
 - Which, by its cumulative character, constitutes a coercive and dominating behaviour,
- or
- That causes a family member to fear for their safety or the safety of another person (Department of Justice, 2020).²

This breakthrough constitutes an important lever for recognizing the dynamics of coercive control in the context of separation and better protecting children who are direct victims. The education of family law professionals on the detection of coercive control will help prevent false claims of separation conflict or parental alienation syndrome.³

¹ Accessed at the no longer operational site <http://www.coercivecontrol.us/what-is-coercive-control/>.

² For a complete definition of family violence refer to <https://laws-lois.justice.gc.ca/eng/acts/d-3.4/FullText.html>.

³ Parental alienation syndrome is not universally recognized by the scientific community nor is it included in the WHO's database of mental disorders.

A – Coercive control, the hidden face of conjugal violence

Coercive control can be difficult to recognize, for both victims and legal professionals, even though it is at the heart of conjugal violence. It may be overlooked or dismissed as a "relationship problem," "conflict" or a "separation dispute."

Why?

- Coercive control does not necessarily involve physical or verbal abuse.
- The imposition of micro rules, harassment and humiliation happens in the private sphere, far from view.
- Traditional gender roles and gender stereotypes mask some of its manifestations.
- Victims may not be aware that they are being controlled or may minimize the controlling behaviour for fear of retaliation.
- Manifestations of coercive control, when seen as occasional and isolated, may be considered less serious or socially acceptable.

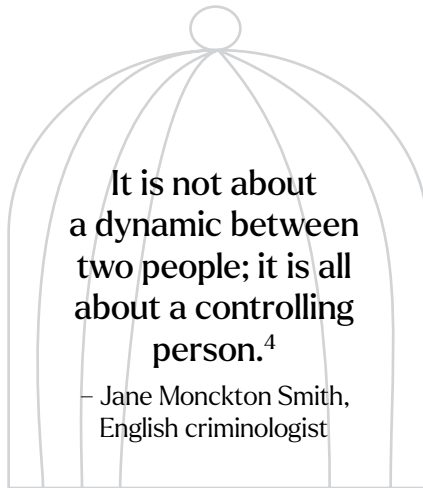


"I almost wished he would hit me because then I would know it was abuse, and there would be proof." – Victim

[our translation]

B – Things to keep in mind when working with a victim

1. Conjugal violence or conflict: three distinguishing criteria



When conflicts arise in a non-abusive relationship, concessions and compromises are made, but each person remains free to make his or her own choices and does not feel compelled to submit to the other person's wishes. In an abusive relationship, decisions made by a dominating partner become rules that, when broken, lead to consequences for the victim.

⁴ J. Monckton Smith, *In Control: Dangerous Relationships and How They End in Murder*, Bloomsbury, UK, 2021, p.19.

Ellen Pence, an American pioneer in promoting innovative strategies to combat conjugal violence, has proposed three helpful criteria for distinguishing conflict from conjugal violence dynamics.⁵



Is there a pattern of behaviour?

(a pattern of abusive behaviour designed to isolate, humiliate, exploit or dominate a person)

Does the victim change her habits and choices as a result of this pattern of behaviour?

(e.g. stops seeing family and friends, changes clothing or eating habits, changes behaviour in the presence of a partner, etc.)

Does she fear the consequences of this pattern?

(e.g. fear of reprisals, fear for her physical integrity, her own life, that of her children or loved ones)

You will find further guidelines for differentiating between conjugal violence and conflict in the Regroupement's brochure **Et si c'était de la violence conjugale ?**. We encourage you to consult it for more details.

⁵ *Ibid*, p.12

2. Identifying the primary aggressor

When the police arrive at the home of a victim of conjugal violence, they are not always able to determine at first glance who is the abuser and who is the victim. It is important not to conflate the abuser's violent behaviours with the victim's reactive violent behaviours.

Omitting to check for manifestations of coercive control can lead to misidentification of the primary aggressor, especially in the context of a cross-complaint.⁶

According to the International Association of Chiefs of Police (IACP), the primary aggressor is the individual who poses the most serious and ongoing threat. He is not necessarily the initial attacker in a specific incident.⁷



⁶ H. Nancarrow et al., *Accurately identifying the 'person most in need of protection' in domestic and family violence law*. Australia's National Research Organisation for Women's Safety (ANROWS), Sydney, 2020 [<https://www.anrows.org.au/publication/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law/>].

⁷ *Intimate Partner Violence Response Policy and Training Content Guidelines 6*, International Association of Chiefs of Police, USA, 2017, cited in Stop Violence Against Women [https://www.stopvaw.org/determining_the_predominant_aggressor].

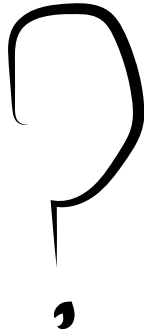
Here are some cues and questions to support police in determining which party is the primary aggressor.

Identifying the primary aggressor, some useful cues⁸:

- Determination to control the other at all costs is what truly defines the primary aggressor.
- The primary aggressor may be the first to call the police.
- Cross-complaints can be used as a coercive control strategy by the primary aggressor.
- Rather than taking the single incident approach, focus on the pattern of behaviours and their manifestations.
- The primary aggressor may not be the person who struck the first blow in a specific incident.
- When both parties are perpetrators, the violence committed by the victim will not usually be associated with a history of violence or efforts to terrorize, subdue, dominate or control the other person.
- A victim's injuries may not be immediately visible, for example those due to a sexual assault or strangulation. On the other hand, in defending themselves, some victims may scratch their attacker, leaving visible marks.



⁸ Drawn from *Warning Signs - Abuse and Relationships*, Michael Samsel, USA, 2018
<https://www.abuseandrelationships.org/Content/Contact/author.html>



Questions to help determine who is the primary aggressor⁹:

- Who makes the rules? For example, who decides: choice of friends, clothing and appearance, type and frequency of sexual expression, food choices, shopping and social activities?
- Who, if anyone, manipulates others (children, relatives, acquaintances and friends) to turn against the other partner?
- Which party seeks to isolate the other socially?
- Which person assumes all rights and expects the other to fulfill them (e.g. having sex or cooking favorite dishes on demand, controlling the family's economic resources)?
- Who was hurt, frightened or intimidated by the violence and abuse?
- Which person fears the other?
- Which person's acts of violence or abuse caused persistent fear or psychological, physical or sexual distress or harm to the other?

⁷ Drawn from "Determining the Predominant Aggressor," *Stop Violence Against Women*, The Advocates for Human Rights, USA, 2018 [https://www.stopvaw.org/determining_the_predominant_aggressor/].

3. Understanding and supporting a victim who wishes to remain in the relationship

Victims often stay or decide to return to their abuser. This can be difficult for outsiders to understand. They may be quick to insist that an abusive relationship end immediately.

Why doesn't she leave him?

For a victim, decision-making is a much more complex process, and can be difficult or impossible, especially when children are involved. Beyond fear of her partner's reaction, many factors can lead a woman to decide not to leave a partner:

- Hope that she can change him, re-discover the love relationship as it was in the beginning
- Doubts about her own responsibility for the violence
- Insufficient financial resources or financial dependency that pre-existed the relationship or resulted from coercive control
- Threats to her physical integrity or that of her children or extended family
- Low self-esteem
- Fear of losing her children or not being able to protect them in case of separation
- Fear of being judged or disowned by family and community
- Physical and financial dependency for a woman with a disability or diminishing autonomy (elderly, ill, etc.)
- Immigration status linked to that of the partner, etc.

Considering the dangers and difficulties that victims of conjugal violence and their children face in the post-separation period, it is understandable that some women make the rational decision to stay with their partners despite the violence.



In this context, you can take the following approach:

- Ask yourself why her partner won't leave her alone, won't let her go, why he won't stop his violent actions.
- Get the victim to verbalize her fears and how she expects the abuser to react to her leaving.
- Ask the victim what can be done to keep her and her children safe.
- Systematically refer her to victim services.
- Tell her you'll be there when she's ready.



C – Focus on the abuser's behaviour

Unlike victims, men who coercively control their partners may appear more composed because they do not suffer the consequences of the controlling behaviour. They seem sympathetic, calm, have a coherent narrative, and may even be the first to call the police.

1. Tactics to divert the attention of legal professionals¹⁰

In their interactions with coercive controllers, justice professionals need to be aware that these abusers draw on a variety of tactics to distract others from their harmful behaviours or minimize the victim's experience.



Here are some of the tactics abusers employ:

- Diversion: attempts to shift your attention to another issue
- Alliance: attempts to direct your attention to experiences, behaviours and beliefs that you and he have in common
- Intrusive, threatening or intimidating behaviours to impose rules: attempts to take control of the support process by overstepping the limits of the intervention framework
- Downplaying, denial and distortion: tries to minimize his actions and the impact on the victim(s); denies his actions or gives a biased interpretation of the facts
- Depressive attitudes, threats (veiled or not) of suicide, destructive behaviours

⁸ Excerpt from the tool Vigie-VC - Carrefour sécurité en violence conjugale (CSVC) [<https://csvc.ca/>].

2. Attitudes or beliefs indicating support or tolerance of violence¹¹

It is common for perpetrators of coercive control to exhibit attitudes or beliefs that indicate they support or condone violence:

- Behaviours that indicate patriarchal attitudes or support male domination of women
- Forceful downplaying or denial of the seriousness of the violence
- Normalization of violence
- Blaming the victim or approving the use of violence to control her
- Violence considered a right or privilege

3. Threats and intimidation of the victim and her loved ones during the legal process

- Threatening to inform social services or immigration authorities
- Communicating with the victim through a loved one
- Sending people to the victim's home to scare her
- Blackmail using children
- Coming to court with a large group of people (family, relatives, friends) to intimidate the victim
- Using non-verbal attitudes to intimidate the victim (insistent looks, smirks, etc.)
- Pressuring the victim to withdraw the complaint
- Finding every possible way to circumvent the conditions (peace bond, restraining order, etc.) in order to reach the victim

⁹ *Ibid.*

4. Threats and intimidation of the victim and her loved ones during the legal process

During the judicial process, abusers frequently use legal tactics to maintain power and control over their partner or ex-partner.

Here are some examples of behaviours observed in the context of conjugal violence:

- Refusing to file court documents, filing late, or filing incomplete or inaccurate documents
- Filing a complaint against the victim (cross complaint)
- Making a report to youth protection
- Initiating delaying proceedings
- Initiating multiple appeals before various judicial bodies
- Making incessant and abusive demands in family law, small claims, defamation, repeated mailings of formal notices, etc.
- Refusing to comply with court orders
- Seeking a custody arrangement that requires face-to-face or ongoing communication with the other parent.



D – Judicial process in family law

1. Guidelines for lawyers and family law practitioners

The guidelines in this section are taken from the *Client Screening to Identify Domestic Violence Victimization*, of the Family Law Section of the Minnesota State Bar Association (USA), which is considered a model in this area.¹²

a | First contact with a client

It is important to verify the presence of conjugal violence at the first contact with your client and to behave cautiously as long as this possibility is not ruled out:

- Block your office phone and cell phone numbers and periodically check that they remain blocked
- If your client's partner finds out that she is talking to or seeing a lawyer, it can be dangerous for her if he feels threatened by an impending separation
- Find out if the client's partner knows that she is filing for separation or taking legal action
- Obtain permission to send documents and letters to the client's home
- Ask your client: "Is it safe to send documents to your home?"
Always have a safe alternative way to contact your client
- If using a checklist, include questions about violence, conflict and control
- Tell the client to create a new email account solely for communication with her lawyer and to create a password that is unlike any other password she has used before
- Determine the need for an interpreter

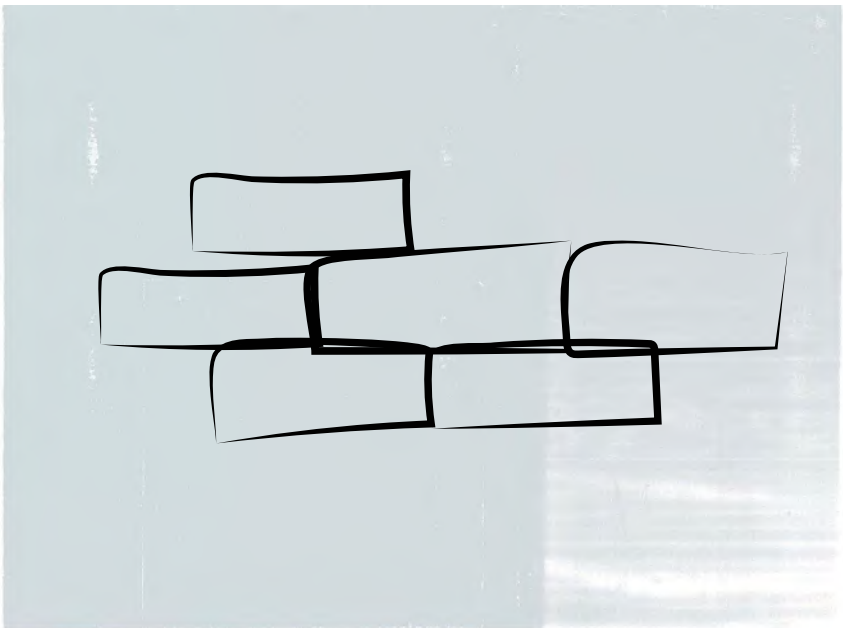
¹² *Client Screening to Identify Domestic Violence Victimization*, Domestic Abuse Committee of the Family Law Section of the Minnesota State Bar Association, USA, 2013.
[<https://www.mnbar.org/docs/default-source/sections/dv-screening-tool-final.pdf>].

b | Know-how and interpersonal skills when conducting interviews

- Explain confidentiality and lawyer-client privilege to the client. Don't assume that she already has a good understanding of the meaning of confidentiality and professional secrecy.¹¹
- Have a calendar (covering the last few years) ready for the client interview.
- Let your client know that violence is not acceptable and that it is not her fault.
- Be comfortable with silence—listen and let your client think.
- Use an interpreter, if necessary.
- Ask open-ended questions.
- Look at the client, watching for visual cues that she is uncomfortable or wants to say more, but needs to be encouraged.
- Use everyday language, avoid acronyms and legal terminology.
- Make sure your client understands—invite and encourage her to ask questions.
- Avoid using the term “conjugal violence,” which many victims do not identify with, and instead talk about control and violence.
- Be aware that your client may think that violence is normal. Do not expect all victims to identify themselves as such.
- Know that your client may minimize the violence.
- Make supportive statements such as “I believe you” or “That must have been difficult for you” or “You did the best you could with the information you had at the time.”

¹¹ Many victims of conjugal violence have been warned by their abuser not to disclose the violence. Therefore, the client may feel that disclosing this information to you puts her at risk. A good understanding of confidentiality and client confidentiality will help the client feel more comfortable disclosing important information.

- ❑ If your client does not initially disclose conjugal violence, continue to inquire as the case progresses; be vigilant and alert to any warning signs.
- ❑ Encourage your client to tell her story more than once. As her trust for you grows, she will be persuaded that she can safely reveal important details.
- ❑ Determine if there are any prior civil or criminal proceedings, arrests, restraining orders or other orders, court dates and possible outcomes.
- ❑ Encourage your client to contact the conjugal violence shelter network for support.
- ❑ Check to see if your client has made a safety plan for herself. If so, help her develop it.





c | Screening and documentation of coercive control

□ Screening for coercive control

- When you talk to your client, she may wonder if what she has experienced is an abusive experience. Here are some suggestions of ways you could respond:



"There are many ways a person can be abused. Sometimes the person doesn't even realize it's happening. This is the case when a person is subjected to very domineering behaviour."



"Abuse and violence is not just physical; it can be sexual, emotional, or financial in nature and include controlling, dominating behaviour."

• Ask your client questions to screen for coercive control:

- ✓ Does your partner threaten to hurt you or people or things you care about?
- ✓ Does he insult, humiliate or denigrate you?
- ✓ Does he control your daily activities, such as how you dress or how you do household chores?
- ✓ Does he deny you access to money or control what you can spend it on?
- ✓ Does he make you report on where you've been, or monitor your phone, email and social media to check up on you?
- ✓ Does he follow you or stalk you, or try to contact you when you don't want him to?

- ✓ Do you feel isolated or as if there is no one to turn to for support?
 - ✓ Is he physically abusive to you, such as pushing, slapping, punching or kicking you?
 - ✓ Does he try to strangle, choke or drown you?
 - ✓ Does he use or threaten to use weapons such as household items, knives or guns to harm you?
 - ✓ Has he threatened or attempted to commit suicide?
 - ✓ Have you recently separated or are you considering separating?
Has it put you at risk or will it put you at risk?
 - ✓ Did he ever threaten to kill you and you believed that he was capable of doing so?
 - ✓ Has he ever hurt the children?
 - ✓ Did he harm or threaten to harm pets or farm animals?
 - ✓ Does he use the child contact provisions to control you or continue to abuse you?
 - ✓ Do you stop yourself from doing things for fear of retaliation? Can you give me any examples of this?
- Identify immediate risks and safety concerns (see Tool 3)**

□ Documenting coercive control

- Document the abuser's actions towards his partner or ex-partner to dominate, threaten or harass her, which also affect the child's best interests (physical, emotional and psychological health).

For example:

- ✓ Deflecting the mother's allegations of child abuse by claiming that she isolates them from him
 - ✓ Using seemingly "caring," "concerned," or "forgiving" paternal behaviours to mask underlying intentions to diminish the mother's credibility and re-establish control
- Document the impact of this behaviour on the victim's ability to adequately care for the children.
 - Always consider the specific vulnerabilities of certain victims (immigrant women, Indigenous women, women with disabilities) and their cumulative impact on the woman.

d | During the proceedings

- Be alert to sudden and inexplicable changes in your client's position (e.g. willingness to settle).
- Note patterns of expression and behaviour, such as one party constantly referring to "us," feeling ownership of the partner, one party deferring to the other, etc.
- Note any proprietary behaviour on the part of the abuser: one party speaks for the other, threats or fantasies of homicide or suicide, one party always answers first, obsession with the other partner, insulting statements, etc.
- Stay alert: the level and type of risk may change over time and circumstances Identifying and managing risk is an ongoing process



2. Parenting, collaboration and parenting arrangements in the context of coercive control

a | The parental role used to maintain control

Because perpetrators of coercive violence are often focused on their need to maintain power over their former partners, their primary concern is usually not the best interests of the child, even though they may portray themselves as devoted and caring parents. As a result, it is important for courts to bear in mind that an abuser's primary concern may actually be to maintain control rather than to look out for the welfare of his child.

For example, he may:

- Refuse to comply with custody orders
- Threaten the former partner with loss of parenting time
- Undermine the victim's authority as a parent
- Use various forms of emotional abuse, such as threatening to harm or abduct the children
- Seek custody arrangements that require in-person transfers, ongoing communication with the other parent, etc.



b | Parental cooperation in cases of family or conjugal violence

- **Consider whether the parties should be required to cooperate on matters concerning the child:**
 - ✓ The victim may be unable to cooperate with the other parent due to trauma or continued fear of the abuser.
 - ✓ It may not be possible to negotiate in the child's best interests if one parent controls the other. Understanding the abusive parent's pattern of behaviour will enable you to avoid interpreting the victim's lack or refusal to cooperate as a lack of cooperation in the judicial process and thus avoid revictimization.

c | Parenting arrangements, custody orders and access

- **Check for the presence of coercive control and consider it in the provisions on access rights for parents and children.** The following information may be taken into account as you carry out your role¹⁴:
 - ✓ The likelihood of high levels of coercion and control over children in cases involving high levels of coercion and control over the mother
 - ✓ The likelihood of excessive physical and disciplinary force being used against children in cases where the mother is being physically abused
 - ✓ The likelihood that contact with the children will be used to monitor the other mother's movements and activities in cases where stalking, surveillance, and coercive control of the mother are present
 - ✓ The likelihood of using child contact to psychologically undermine or demean the child or the child's relationship with the mother in cases where demeaning behaviours related to coercive conjugal violence are present.

¹⁴ *Family Law – Training for Professionals*, Justice Canada
<https://www.justice.gc.ca/eng/fl-df/cf/mdf/tra-form/index.html>

- **Determine the custody arrangement that would best promote the child's physical, emotional and psychological safety and well-being.** Cases of coercive and controlling violence require a more vigorous response than those involving isolated or minor incidents¹⁵:
 - ✓ It may be desirable that the abusive parent's time be limited, supervised or denied because of the potential risk to the child or the other parent.
 - ✓ Custody arrangements that require a great deal of cooperation between parents may not be safe, even if they are possible.
 - ✓ In some cases, no contact with the abusive parent may be the only safe arrangement.

- **If the relationship with the abuser offers positive benefits, ensure safe contact. The following are child-centred principles and priorities for custody and access cases where conjugal violence is present¹⁶:**

Priority No. 1: ensure the safety and protection of children

Priority No. 2: ensure the safety and well-being of the victimized parent

Priority No. 3: respect the right of adult victims to lead their own lives

Priority No. 4: hold perpetrators of conjugal violence accountable for their violent behaviour

Priority No. 5: allow children to have access to both parents

Priority #5 is dependent on the achievement of Priorities 1 through 4.

- **Consider any orders or proceedings in other areas of law that are relevant to assessing the child's best interests, even those that are no longer in effect.**

¹⁵ *Ibid.*

¹⁶ *Ibid.*



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