

# **Brief on Coercive Control Legislation: Considerations for Persons with Intellectual Disabilities**



**Prepared by Inclusion Canada**

**Date: October 30, 2023**

## Introduction

Coercive control represents a significant societal challenge, with severe repercussions for individuals with intellectual disabilities. This form of control not only impacts interpersonal relationships but also challenges fundamental aspects of personal autonomy, freedom, and dignity. The issue is particularly salient for women with intellectual disabilities, who often face economic dependencies and intersectional discrimination that amplify their vulnerability.

Inclusion Canada is committed to advocating for the rights and well-being of persons with intellectual disabilities. We fully support legislative measures aimed at criminalizing coercive control, but we urge lawmakers to consider the unique complexities faced by this population. Furthermore, we emphasize the need to scrutinize the "best interests" defence and its potential misuse against individuals with intellectual disabilities.

Our focus extends beyond intimate partner relationships to include a range of interpersonal dynamics, such as caregiving settings and group living facilities. It is within these varied contexts that the issue of coercive control often becomes most palpable. We, therefore, advocate for a legislative approach that is both comprehensive and nuanced, taking into account these complexities.

## Principles

Inclusion Canada believes that any legislative approach to address coercive control must be underpinned by a set of guiding principles that prioritize the dignity, autonomy, and well-being of individuals with intellectual disabilities. These principles should:

1. Recognize and emphasize the inherent right to personal autonomy, including the right to make choices and take risks.
2. Uphold the rights recognized in the Convention on the Rights of Persons with Disabilities (CRPD), particularly those related to the right to equality in the exercise of legal capacity without discrimination based on disability, and the obligation to ensure access to supports a person may require to exercise legal capacity.
3. Factor in the intersectional discrimination faced by women with intellectual disabilities, acknowledging that their experiences with coercive control may differ qualitatively from those of other groups.
4. Move away from paternalistic perspectives that prioritize "protection" over individual rights, advocating instead for an individual-centric approach.

5. Commit to the application of these principles in a range of settings, from intimate relationships to the care economy including in the context of group living facilities (or congregate residential care).

We urge that these principles inform the development of legislative measures that are comprehensive, inclusive, and just. They should serve as the foundation for all subsequent discussions, evaluations, and implementations related to the proposed coercive control legislation.

### **Autonomy in Intimate Relationships**

Inclusion Canada wishes to underscore the essential need for autonomy in intimate relationships for individuals with intellectual disabilities. It is vital to recognize the duality of issues concerning this population. While it is important to protect against coercion, caution must be exercised to ensure that legislative measures do not inadvertently curtail an individual's access to intimate relationships. Striking this balance is crucial to uphold both safeguarding and personal freedom.

### **Scope of Legislation**

Inclusion Canada finds the current legislative proposals on coercive control to be overly restrictive in their focus on family members and intimate partners. We strongly advocate for an expanded scope that encompasses a broader range of interpersonal relationships, including those in group living facilities and caregiving settings.

### **Limiting the 'Best Interests' Defence**

The "best interests" defence as it stands may be disproportionately leveraged in the name of protection to justify coercive control against persons with intellectual disabilities. We recommend that this defence be strictly limited, applicable only in the context of parent-minor child relationships and specific exceptional circumstances that involve prior and informed consent. In situations where a person may have challenges to communicate in ways most others can understand, or require extensive support in decision making, the UN Committee on the Rights of Persons with Disabilities has recommended that instead of using the best interest principle as guidance, the principle of 'best interpretation of a person's will and preferences in the circumstances' should be adopted. This principle admits of interpretive challenges in situations where a right to autonomy must be balanced with legitimate concerns to safeguard a person's right to be free from abuse, neglect, undue influence and coercion.

### **Expanding the Scope Beyond Intimate Relationships**

Inclusion Canada raises concerns about the narrow focus on "intimate relationships" in the current legislative proposals. We advocate for a more comprehensive approach that also encompasses various types of relationships and settings, such as residential facilities and staff-client interactions in support environments. Such an

expansion is crucial for addressing the unique challenges faced by individuals with intellectual disabilities in diverse contexts. With a growing policy focus on how to regulate the 'care economy' in Canada and internationally, we believe it would be shortsighted not to take the broader set of caring relationships into account.

Specifically, the current language of "two persons who are connected" needs a broader interpretation to include staff-client relationships within facilities established to support adults with disabilities. This inclusive approach ensures that a variety of scenarios, such as a woman in her 30s placed in a special care home by a sibling, are not inadvertently omitted from the legislation's purview.

By broadening the scope, the legislation can be more effective in protecting the rights and well-being of persons with intellectual disabilities in a variety of contexts, precisely because it will recognize and attend to the risk and reality of coercive control in intimate relationships of care more broadly.

### **Specific Examples**

Inclusion Canada finds it crucial to illustrate the limitations and potential pitfalls of the current legislative proposals through concrete examples. These examples not only highlight areas where the proposed Bill may fall short but also demonstrate cases that might be inadvertently caught by the legislation.

#### **Situations Not Adequately Covered**

1. A woman with an intellectual disability placed in a group home by a family member without her consent and contrary to her wishes, where she has no control over her day-to-day life.
2. A man with an intellectual disability who experiences coercive control in a staff-client relationship within a supported living facility.
3. An adult with an intellectual disability whose decision-making freedom is constrained by legal arrangements such as guardianship. Although these arrangements are typically set up with good intentions, they undermine autonomy. This highlights the importance of promoting supported decision-making models, ensuring that any legal arrangement actively involves the individual's consent and participation.

#### **Situations Potentially Misinterpreted**

1. A family member providing necessary support to an adult with an intellectual disability, which could be misconstrued as coercive control due to vague legislative language.

2. A paid staff in a group home implementing a crisis plan previously agreed upon, which could be mistakenly viewed as an act of coercion.

## Recommendations

Inclusion Canada, committed to the autonomy and dignity of individuals with intellectual disabilities, offers the following recommendations to address the multifaceted nature of coercive control:

1. **Prioritize Supported Decision-Making:** Transition from substitute decision-making frameworks to models that emphasize supported decision-making in line with the principles of the CRPD.
2. **Re-evaluate Legal Instruments:** Conduct a comprehensive review of legal regimes and processes -like adult guardianship laws to ensure they do not become tools of coercion.
3. **Training for Families and Support Workers:** Implement training programs that equip families, paid support, and other professionals to recognize and address instances of coercive control.
4. **Active Consultation:** Engage individuals with intellectual disabilities, their families, advocacy groups, and other stakeholders in the legislative process.
5. **Adapt International Best Practices:** Consider insights from international legislation on coercive control and adapt them to fit the Canadian context.
6. **Public Awareness Campaigns:** Develop and implement public education programs that raise awareness about the complexities of coercive control, particularly as it pertains to individuals with intellectual disabilities.
7. **Monitoring and Reporting Mechanisms:** Establish robust mechanisms to monitor residential facilities and caregiving settings for instances of coercive control.
8. **Review and Amend the 'Best Interests' Defence:** Limit the applicability of the "best interests" defence to parent-minor child relationships and exceptional circumstances involving prior and informed consent.
9. **Broaden Legislative Scope:** Expand the scope of the proposed legislation to include staff-client relationships in group living facilities and other caregiving settings.

10. **Clarity and Ease of Understanding:** Ensure that the legislation is clearly articulated, avoiding ambiguities that could lead to misinterpretation or misuse.

These recommendations aim to provide a comprehensive strategy to address both the potential new offense under the criminal code and other initiatives, thereby ensuring a more inclusive and effective legislative approach.

## **Gender Equality and Women's Issues**

Inclusion Canada recognizes that coercion and control disproportionately affect women, particularly those with intellectual disabilities. This section aims to shed light on the unique vulnerabilities and intersectional discrimination these women face.

### **Unique Vulnerabilities**

1. **Economic Dependence:** Women with intellectual disabilities are often economically dependent due to discriminatory employment practices, making it difficult for them to escape coercive situations. Male partners may insist on controlling all of the household income and making all financial decisions, disparaging the ability of women with intellectual disabilities to manage their money or to make decisions about how it should be spent.
2. **Stereotypes and Social Stigma:** Harmful societal norms and stereotypes further marginalize women with intellectual disabilities, making them more susceptible to coercion. Male intimate partners who engage in coercive control often use derogatory language that targets a woman's intellectual disabilities, undermining her self-worth in an attempt to make her believe that no one else would want to be with her.
3. **Limited Access to Support Services:** Gender-specific barriers often hinder these women's access to necessary support services. Male partners may insist on attending medical appointments as "support", preventing women from disclosing abuse and seeking help. They may control access to transportation and refuse to take women to programs and services. Women with intellectual disabilities who have children may also be threatened with reports to social services that they are unfit to parent.

### **Intersectional Discrimination**

Women with intellectual disabilities often experience intersectional discrimination based on gender, disability, and sometimes other factors like race and socio-economic status. This complex web of discrimination amplifies their vulnerability to coercive control.

### **Addressing Gender Equality in Legislation**

1. **Inclusive Consultation:** Involve women with intellectual disabilities in the legislative consultation process to ensure their unique perspectives are considered.
2. **Gender-Sensitive Training:** Equip law enforcement and support workers with training that addresses the unique challenges faced by women with intellectual disabilities, especially in intimate relationships.

By incorporating these insights and recommendations, the legislation can better address the nuanced challenges faced by women with intellectual disabilities, thereby making strides in the larger fight for gender equality.

### **Government's Intentions and Legislative Timing**

Inclusion Canada notes that the legislative process for addressing coercive control is still in its early stages, providing a critical window for stakeholder input. This section discusses the uncertainties surrounding the government's intentions and the timing of the proposed legislation.

#### **Opportunity for Input**

Given that legislative drafters are not too far along, there is a valuable opportunity for advocacy groups, experts, and affected individuals to contribute their perspectives and recommendations.

#### **Uncertainties**

The government's specific intentions regarding the scope and particulars of the proposed legislation remain unclear. Such uncertainties add a layer of complexity to stakeholder engagement and advocacy efforts.

#### **Legislative Timing**

The evolving global discourse on coercive control, coupled with the Justice Department's renewed focus, signals that the timing is ripe for comprehensive legislative action.

Inclusion Canada emphasizes the importance of seizing this opportunity to shape a legislative framework that is both effective and inclusive, taking into consideration the unique vulnerabilities and needs of individuals with intellectual disabilities.

#### **Clarification on Government Intentions**

In alignment with observations from committee members, Inclusion Canada notes the uncertainty surrounding the government's specific intentions. Is the legislative consultation process rushed, or is it part of broader, long-term engagement? Addressing this ambiguity is crucial for tailoring our recommendations effectively.

## Conclusion

Inclusion Canada, steadfast in its mission to champion the rights and dignity of individuals with intellectual disabilities, acknowledges the urgent need for meaningful legislation on coercive control. The complexities and nuances of this form of control, especially as they pertain to persons with intellectual disabilities, require a robust and inclusive legislative response.

The recommendations and insights presented in this brief are grounded in both evidence and lived experience, serving as a guide for policymakers. As the legislative process unfolds, there is an unparalleled opportunity to enact transformative change that not only addresses coercive control but also upholds the inherent rights of all individuals to autonomy, dignity, and freedom.

We extend our gratitude to the committee for providing the platform for this essential dialogue and are committed to further collaboration, advice, and support to initiatives that align with our mission.

---

*Inclusion Canada is a national federation of 13 provincial-territorial associations and over 300 local associations working to advance the full inclusion and human rights of people with an intellectual disability and their families. Inclusion Canada leads the way in building an inclusive Canada by strengthening families, defending rights, and transforming communities into places where everyone belongs.*

For more information, please contact Kurt Goddard, Executive Director, Legal and Public Affairs, [kgoddard@inclusioncanada.ca](mailto:kgoddard@inclusioncanada.ca) / 416-661-9611 x225