



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN

## **Bill C-16: Protecting Victims Act**

**CANADIAN BAR ASSOCIATION  
CRIMINAL, FAMILY, CHILD AND YOUTH LAW SECTIONS AND WOMEN'S LAW FORUM**

**February 2026**

## **PREFACE**

The Canadian Bar Association is a national association representing 40,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the CBA Criminal, Family, Child and Youth Law Sections and Women's Law Forum, with assistance from the Advocacy Department at the CBA office. The submission has been reviewed by the Policy Committee and approved as a public statement of the CBA Criminal, Family, Child and Youth Law and Women Lawyers Sections.

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# **Bill C-16: *Protecting Victims Act***

## **I. INTRODUCTION**

This submission addresses Bill C-16, *Protecting Victims Act*, comprehensive legislative reform touching on timely justice, sentencing integrity, gender-based violence, and privacy protection. The Bill proposes measures to reduce unreasonable judicial delay, prevent the imposition of sentences below statutory minima, clarify the rules governing sexual activity and private records, refine prohibitions on deepfake imagery, and introduce new offences addressing coercive control and femicide, while broadening the scope of restorative justice. Collectively, these amendments signal a pivotal step toward advancing fairness, accountability, and equality within Canada's justice system. Reviewed through the lenses of access to justice, proportionality, and protection from gendered and systemic harm, this submission emphasizes three priorities: ensuring procedural fairness and timely resolution, maintaining proportional sentencing through judicial discretion, and safeguarding individuals from coercion and harmful digital and intimate abuses. It further supports expanded restorative justice pathways that uphold voluntariness, safety, and accountability, alongside privacy protections that respect consent and autonomy. The CBA welcomes this opportunity to engage constructively with Parliament to refine Bill C-16 so that it achieves its vital objectives of enhancing safety, justice, and the rule of law for all Canadians.

## **II. UNREASONABLE DELAY & ALTERNATIVE REMEDIES TO A STAY OF PROCEEDINGS**

### **A. Summary of the CBA's position**

The CBA Sections support the legislator's effort to promote timely prosecutions and protect victims' rights and safety. We understand that Bill C-16 is intended to address concerns that the courts' current application of *R. v. Jordan*<sup>1</sup> is compromising access to justice and faith in the system. Nonetheless, the

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<sup>1</sup> *R. v. Jordan*, 2016 SCC 27 [*Jordan*].

CBA Sections submit that Bill C-16 does not constitute the kind of structural and procedural change required to produce a “much-needed shift” away from a “culture of complacency towards delay”<sup>2</sup>.

Bill C-16 would eliminate the court’s obligation to stay proceedings when the Crown fails to rebut the presumption that a judicial delay is unreasonable once it exceeds the *Jordan* ceiling. Instead, the Bill states that a stay should not be ordered “unless it is satisfied that no other remedy would be appropriate in the circumstances”<sup>3</sup>.

The CBA Sections acknowledge that strict judicial timelines are creating systemic barriers for victims of crimes and cases are increasingly being permanently stayed or withdrawn<sup>4</sup>. Stays, notably of sexual assault charges, undermine the legitimacy of the criminal justice system, exacerbate survivor trauma and leave some survivors at risk of future violence<sup>5</sup>. We recognize that considering victims’ rights is integral to the proper administration of justice. However, we maintain that permitting the imposition of alternative remedies for section 11(b) *Charter* violations would fail to better protect victims’ interests, while also undermining the rights of the accused<sup>6</sup>.

## B. Overview of Bill C-16 on Judicial Delays

Bill C-16 amends the *Criminal Code* to, among other things:

“create a new Part in respect of unreasonable delay that requires a court to consider specific factors in relation to case complexity, directs a court to exclude time periods in respect of specific applications and requires that a stay of proceedings be ordered only if a court is satisfied, taking into account a list of factors, that no other remedy would be appropriate and just.”<sup>7</sup> (Emphasis added)

This approach constrains judges’ discretion in determining whether a case features the “exceptional circumstances” necessary to justify a presumptively unreasonable delay, while simultaneously granting judicial discretion to impose remedies other than a stay of proceedings. By leaving these alternative remedies undefined, Bill C-16 introduces uncertainty and undermines the predictability of the law.

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<sup>2</sup> *Jordan*, at paras 112 and 40.

<sup>3</sup> See Bill C-16, amendment to section 492.31(1) of the *Criminal Code*. See also amendment to section 492.23.

<sup>4</sup> Office of the Federal Ombudsperson for Victims of Crime, *Rethinking Justice for Survivors of Sexual Violence: A systemic investigation, “R v. Jordan”* (2025), pp 4-1 – 4-20, p 4-1, [online](#).

<sup>5</sup> See *Ibid*, p 4-2.

<sup>6</sup> *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, sec 11(b).

<sup>7</sup> See Bill C-16, *Summary*, l).

Bill C-16 introduces a framework resembling that proposed by the dissent in *Jordan*, rooted in *R. v. Morin*<sup>8</sup>, under which any actual prejudice arising from the overall delay must be evaluated in light of societal interests: on one hand, fair treatment and prompt trial of accused persons and, on the other, determination of cases on their merits<sup>9</sup>. The Supreme Court's majority rejected this abuse-of-process-like analysis, reasoning that the presumptive ceilings – that have now been applied for a decade – already incorporate considerations of prejudice and effectively strike a balance between competing societal interests<sup>10</sup>. Accordingly, when the ceiling is exceeded, it is presumed that the accused's rights have been violated in such a way that the only proper remedy is a stay of proceedings.

### **C. Bill C-16 would not have the intended effect**

The CBA Sections submit that introducing alternative remedies to section 11(b) violations will not achieve the intended goal of protecting victims and survivors of crime. On the contrary, allowing judges to impose remedies other than a stay of proceedings may prolong judicial delays, as courts may be less inclined to act swiftly. It further disincentivizes governments and other stakeholders from making investments in the criminal justice system if they know there are simply alternate remedies available than a stay.

As mentioned, extended delays undermine the rights of the accused. However, as stated in *Jordan*, extended delays also have a significant impact on victims:

“Victims of crime and their families may be devastated by criminal acts and therefore have a special interest in timely trials. Delay aggravates victims’ suffering, preventing them from moving on with their lives.”

Timely trials allow victims and witnesses to make the best possible contribution to the trial and minimize the “worry and frustration [they experience] until they have given their testimony”. Repeated delays interrupt their personal, employment or business activities, creating inconvenience that may present a disincentive to their participation.”<sup>11</sup> (References omitted).

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<sup>8</sup> *R. v. Morin*, [1992] 1 S.C.R. 771.

<sup>9</sup> *Jordan*, at paras 142 and following.

<sup>10</sup> *Jordan*, at paras 109-110.

<sup>11</sup> *Jordan*, at paras. 23-24.

It should also be borne in mind that this proposal could lead to another mechanism for reduced sentences to be imposed, to be considered on top of *Summers*<sup>12</sup> credit, credit for strict bail conditions, and credit for harsh pre-sentence conditions, ultimately resulting in sentences that would otherwise be inappropriate. It may also be anticipated that litigation of these issues will result in more protracted sentencing hearings, burdening of court dockets, and overall increased court delay.

For these reasons, the CBA Sections are wary of Bill C-16's potential adverse effects on the interests of accused persons, victims, and society more broadly. The CBA Sections are further concerned that this Bill may place additional pressure on the justice system and its actors, particularly legal professionals<sup>13</sup>.

### RECOMMENDATION

**Rather than devising a new framework for responding to section 11(b) violations, the government should focus its efforts on addressing the systemic causes of such violations. This objective is best accomplished by directing resources towards critical points within the justice system to reduce, or ideally eliminate, unreasonable delays.**

In its report *Rethinking Justice for Survivors of Sexual Violence: A Systemic Investigation*, the Office of the Federal Ombudsperson for Victims of Crime highlights multiple causes of judicial delays<sup>14</sup>. To name a few:

- Limited judges available and the ongoing need for judicial appointments;
- Lack of courthouse space and staff;
- Inefficient administration in scheduling hearings;
- Larger volume of electronic records, text messages, and video footage.

To these, based upon the feedback of CBA practitioners from across the country, we add:

- Ever-increasing complexity of matters in terms of evidence and legal issues (e.g. new "records regime" and subsequent judicial interpretation);
- Insufficient numbers of prosecutors and administrative staff to review and prepare disclosure;
- Increasing numbers of unrepresented people who require significant resources above and beyond what it would cost to provide them with legal representation.

By way of concrete illustration, we take the example of the body-worn camera. In major Canadian cities such as Toronto and Vancouver, police officers are now required to wear body-cameras to record calls,

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<sup>12</sup> *R v Summers*, 2014 SCC 26: [online](#).

<sup>13</sup> For more information on wellness in the legal profession, visit the [CBA website](#).

<sup>14</sup> See note 4, *Rethinking Justice for Survivors of Sexual Violence: A systemic investigation*, p 4-6.

investigations and interactions with the public. This aims to enhance transparency and improve trust in our police forces. While such a policy is laudable, it has resulted in a significant increase in disclosure material that Crown prosecutors are often inadequately resourced to manage. This generates additional delays. One example of a targeted investment of resources would be hiring qualified technicians to process, organize and disseminate body-camera footage.

Practitioners have observed that the time from the laying of the charge or the swearing of an Information and the delivery of initial disclosure to defence counsel now routinely takes several months. This is particularly true in busy jurisdictions, and arises even in simple, straightforward matters. This represents an exponential increase from the matter of weeks that was typical 10 or 15 years ago, highlighting that the problem of delay has in fact grown worse since the release of *Jordan*. Likewise, the complexity and number of pre-trial applications have also increased, which all must now happen before a trial can take place.

The CBA Sections invite the legislator to rethink its approach to the persistent problem of unreasonable judicial delays. While we appreciate that many solutions are out of the federal government's hands in terms of resources and administration of the criminal justice system, it does have a role to play in partnership with the provinces and territories. Any legislative change entails downstream systemic consequences to the administration of justice that would require substantial investments to address their operational impact on court systems.

One solution may be to increase the factors that can be considered in assessing case complexity, for example by introducing pre-trial motions as a factor even though they are foreseeable by the Crown.

### **III. IMPOSITION OF SENTENCES BELOW THE MINIMUM PUNISHMENT ("SAFETY VALVE")**

Bill C-16 would permit the imposition of a shorter term of imprisonment below the minimum punishment of a specified term of imprisonment, "*if, in the circumstances, the minimum punishment would amount to cruel and punishment for that offender*".<sup>15</sup> This would not apply in respect of an offence for which the minimum punishment is life, and does not impact the operation of s. 320.23 of the *Code*. The new s. 718.4(5) makes clear that the shorter term of imprisonment imposed "is a minimum term of imprisonment". Later in the Bill, section 87 provides that, following the enactment of

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<sup>15</sup> Section 63 of the Bill, proposing the new s. 718.4 of the *Code*.

s. 718.4 of the *Code*, the operation of the minimum punishments set out in the *Code* or in any other Act of Parliament are affirmed.

The effect of the above mandates a period of imprisonment in all cases in which a minimum period of imprisonment is required, and eliminates the possibility of a conditional sentence, suspended sentence, or a discharge.

The CBA has long been opposed to mandatory minimum sentences on the grounds that: they disproportionately affect Indigenous offenders, racialized offenders, and members of other marginalized communities; they do not deter crime; they remove incentives to resolve matters, result in additional constitutional litigation and add to already overburdened court dockets; and they are coercive and may encourage justice participants to agree to resolutions involving lesser or different charges, even where the charges pled to do not properly reflect the conduct at issue. The CBA has consistently advocated for the maintenance of judicial discretion in sentencing.<sup>16</sup>

While the CBA has in the past suggested the implementation of a “safety valve” as an alternative to the elimination of all mandatory minimum sentences other than murder, where injustice could result”,<sup>17</sup> in our view, the proposed exemption in Bill C-16 does not allay the existing concerns that the CBA Sections continue to have with mandated minimum sentences.

The wording of the Resolution on Mandatory Minimum Sentences carried at the 2021 Annual Meeting of the CBA proposed that:

“where injustice could result by the imposition of a mandatory minimum sentence, in the interests of justice, the sentencing judge may depart from the mandatory minimum sentence and consider other sentencing options.”

A key concern of the CBA Sections on the proposed exemption in this Bill is that the statutory provisions would mandate a minimum term of imprisonment and limit the range of sentencing options available to the sentencing judge.

As exemplified in the Supreme Court of Canada’s recent decisions of *Quebec (Attorney General) v. Senneville*<sup>18</sup>, and *R. v. Hill*<sup>19</sup>, , there are instances, rare as they may be, where a suspended sentence or

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<sup>16</sup> See CBA Criminal Justice Section, [Submission on Bill C-5 – Criminal Code and Controlled Drugs and Substances Act Amendments](#), February 2022, pgs. 1-8.

<sup>17</sup> Resolution 21-04-A, [Mandatory Minimum Sentences](#), adopted at the CBA Annual Meeting, February 17, 2021

<sup>18</sup> 2025 SCC 33

<sup>19</sup> 2023 SCC 2

even a discharge may be appropriate for certain offences carrying a mandatory minimum sentence of imprisonment.<sup>20</sup> It is also conceivable that a conditional sentence order (CSO), a stricter form of punishment and considered to be a form of imprisonment, would be appropriate. The CBA's submission on Bill C-14, which should be read in conjunction with this submission, further expands upon circumstances where a CSO may be a just and appropriate sentence, and where the removal of that option would lead to an unjust outcome. While the submission on Bill C-14 was focused on CSOs in the context of the removal of that option for certain sexual offences, a similar rationale applies to CSOs for non-sexual offences that carry a mandatory minimum sentence of imprisonment.

The CBA Sections are also of the view that this will not serve to reduce, to any appreciable degree, the amount of litigation that mandatory minimum sentences currently attract, and by consequence, serve to reduce court delays.

We suggest that the provisions proposed in sections 1 and 2 of Bill S-208<sup>21</sup> may be a preferable framework. Section 1 of Bill S-208 would maintain judicial discretion on sentencing, even where a punishment is declared to be a minimum punishment. Section 2 would require a court to consider all available options, other than the minimum punishment of imprisonment or period of parole ineligibility, and determine that there is no alternative to the minimum punishment or period of parole ineligibility that is just and reasonable.

#### **IV. AMENDMENTS TO PROCEDURAL RULES ON ADMISSIBILITY OF SEXUAL ACTIVITY EVIDENCE AND PRIVATE RECORDS**

Bill C-16 introduces amendments relating to the admissibility of sexual activity evidence and the private records regime which apply to sexual offences.

##### **A. Extension of notice period**

The CBA Sections support the extension of the notice period for applications for admissibility of records or admissibility of sexual activity evidence from seven to sixty days.

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<sup>20</sup> *Quebec (Attorney General) v. Senneville*, 2025 SCC 33, paras. 5-7; *R. v. Hills*, 2023 SCC 2, paras. 144, 154-162

<sup>21</sup> Bill S-208, *An Act to amend the Criminal Code (independence of the judiciary)*

## **B. Applications that may be heard in writing**

The CBA Sections also support the provisions which would permit a joint application on admissibility of records, or admissibility of evidence of sexual activity evidence, to be heard in writing and without holding a hearing.

However, this need not be limited to “joint applications” only. The CBA Sections suggest that the provisions be amended to permit any application to be heard in writing and without a hearing, where all parties agree that the applications may be heard in writing and without a hearing, and at the discretion of the judge. This would not require that all parties take the same position as to whether the application may be admissible. Relaxing the strict requirement for an oral hearing in every case would allow greater flexibility, in appropriate circumstances, and would assist in reducing the burden on court dockets and overall delay. The CBA Sections acknowledge that in some cases, an application in writing only may not be appropriate, particularly in applications where the Crown wishes to cross-examine the affiant on their affidavit.

The CBA Sections also suggest that an application in writing, without requiring a hearing, may be heard in applications for *production* of records as well, where the parties agree that they may proceed in this manner, and at the discretion of the judge.<sup>22</sup>

The objective is to create more flexibility in the way these applications are adjudicated and provide options that save time, preserve scarce court time, and does not require three lawyers to find repeated days of mutual availability which can take months.

## **C. Permitted disclosure**

The CBA Sections support the amendments that specify permitted disclosure of certain records or therapeutic records in the possession of the prosecutor.<sup>23</sup> However, the CBA Sections suggest that the provisions be expanded to include *any communication to which the accused is a party*, as opposed to limiting it only to “any communication between the accused and the complainant”. The CBA Sections are of the view that there is no reasonable expectation of privacy in these communications for the purpose of production to the accused. Sensitive information or intimate images that may be contained

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<sup>22</sup> For further discussion, see paras. 63-67 of the Final Report of the Working Group on Sections 278.1-278.94 of the Criminal Code (“Records Regime”), Uniform Law Conference of Canada, August 2025, [online](#).

<sup>23</sup> Section 34 of the Bill, setting out the new section 278.2(2) of the *Code*.

in electronic communication could be redacted by prosecutors before providing this material to the accused.<sup>24</sup>

The CBA Sections also suggest adding specific reference to the permitted disclosure of documentation from a sexual assault forensic examination regarding the sexual activity in question. While this may be captured by the new s. 278.2(2)(a)<sup>25</sup>, specific reference to this documentation would eliminate any lasting confusion on this point.<sup>26</sup>

#### D. Therapeutic records

The CBA Sections generally do not oppose treating therapeutic records differently from other categories of records that attract a reasonable expectation of privacy. However, they observe that the language used to refer to the applicable standard involving therapeutic records imposes an increasingly more stringent standard throughout the proposed legislation. For example:

- For applications for production of a therapeutic record, the new sections 278.12(3)(c) (records in the possession of a third party) and 278.21(3)(c) (records in the possession of the prosecutor) would require that the application set out the grounds to establish that the therapeutic record contains evidence that “**could raise a reasonable doubt as to the accused’s guilt**”. [emphasis added]
- For production of a therapeutic record for review by to the **judge**: the new sections 278.14(1) and 278.23(1) (records in the hands of a third party or the Crown, respectively) would require that the application has established that it contains evidence that “**could raise a reasonable doubt as to the accused’s guilt**” **and** that production “**is necessary in the interests of justice**”. [emphasis added]<sup>27</sup>
- For applications for production of a therapeutic record to the **accused**: the new sections 278.16 and 278.25 would require that the judge be satisfied that the therapeutic record, or part of it, contains evidence that is “**likely to raise a reasonable doubt as to the accused’s guilt and that is not available from any other source**”. [emphasis added]
- For applications for **admissibility**: The new section 278.3(2)(c) would require that the application be accompanied by an affidavit setting out how the evidence is “**likely to raise a reasonable doubt**”. However, the new section 278.29(2)(c) would require that the judge determine that the therapeutic record, or part of it, be evidence that is “**likely to raise a**

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<sup>24</sup> For further discussion, please see paras. 37-42 of the Final Report of the Working Group on Sections 278.1-278.94 of the Criminal Code (“Records Regime”), *supra* note 22.

<sup>25</sup> The new s. 278.2(a) would read: “a record or part of a record, if the prosecutor intends to adduce the record or part in court or if the record or part directly relates to the activity that forms the subject matter of the charge against the accused”.

<sup>26</sup> See discussion at paras. 43-46 of the Final Report of the Working Group on Sections 278.1-278.94 of the Criminal Code (“Records Regime”), *supra* note 22.

<sup>27</sup> The requirement that production for review by a judge be “necessary in the interests of justice” is already included in the current s. 278.5 of the *Code*.

*reasonable doubt as to the accused's guilt and there is no other evidence that is capable of raising a reasonable doubt as to the accused's guilt". Under the new section 278.31(4)(d), the judge must also state in their reasons how the therapeutic record is "likely to raise a reasonable doubt as to the accused's guilt and why the judge is of the opinion that there is no other evidence that is capable of raising a reasonable doubt as to the accused's guilt". [emphasis added]*

These changes raise two concerns. First, it would be likely impossible for a judge, on a pretrial motion, to determine whether there is any other evidence that is "capable of raising a reasonable doubt as to the accused's guilt", without having heard all of the evidence that would be heard at a trial. Further, the threshold of "likely to raise a reasonable doubt" must be set out in an affidavit in the accused's application. This isolates the therapeutic record from the whole of the evidence and has the likely effect of creating an impossible standard to meet. In practice, a single piece of evidence, standing alone, may not be sufficient to raise a reasonable doubt, but taken and evaluated in context with other evidence, or with cross-examination, it may raise a reasonable doubt.

Second, the inconsistent language and imposition of an increasingly stricter standard through the stages of applications for production and admissibility is likely to cause confusion and could potentially lead to more protracted litigation.

#### **E. Potential impact of expansion of category of offences to which the regime applies**

Bill C-16 would expand the category of offences subject to s. 276, and the private records regime, to include "*any other offence under this Act that is of a sexual nature or that is committed for a sexual purpose*". The CBA Sections are concerned that this tends to result in more applications overall, and potentially motions for directions, to determine whether the regime applies. This may add to the increasing problem of delay and congestion of court dockets caused by the scheduling of these applications and time needed to hear them.

For example, the new offence of *coercion or control of intimate partner* is not listed as one of the enumerated offences. In circumstances where the pattern of coercive or controlling conduct includes "**(b) coercing or attempting to coerce the intimate partner to engage in sexual activity**"<sup>28</sup>, but where sexual assault or any other enumerated offence listed in s. 276 is not also charged, it may be unclear as

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<sup>28</sup> Section 28 of the Bill, setting out the new section 264.01(2)(b)) of the *Code*.

to whether the regime should apply. While it is arguable that it does apply as the conduct may be considered “of a sexual nature”, it is also arguable that it does not.

## V. PROPOSED REFINEMENTS TO VARIOUS AMENDMENTS RELATING TO SEXUAL OFFENCES, “DEEPAKE” IMAGERY PROVISIONS, PROHIBITIONS

The CBA Sections comment on certain proposed amendments to the *Code* relating to sexual offences against children, “deepfake” imagery provisions, and relevant prohibitions.

**Section 6** of the Bill amends section 150 of the *Code* to add the following language:

*sexual organs* include breasts that are or appear to be female breasts and the anal region;  
(*organes sexuels*)

The CBA Sections recommend that this be revised to include “genital organs”, which is terminology included in the existing language for certain offences (eg., sections 162(1), 162.1(2)(a), 171.1(5)(a)(ii), 173(2) of the *Code*).

**Section 12** of the Bill adds the offence of publishing, transmitting, selling, making available, or advertising a representation “that is or is likely to be mistaken for a photographic, film, video, or other visual recording of a person committing bestiality”. The CBA Sections note that this would not capture drawings or computer-generated imagery. They also suggest that *possession* of realistic bestiality material should be included in this offence, on the premise that possession of such material, like child sexual abuse material, normalizes and creates a market for the illegal act of bestiality itself.

**Section 13** of the Bill adds sexual exploitation to the list of included offences for s. 161 prohibitions. The CBA Sections are concerned that, presently, certain offences that may involve a child victim are not eligible for a s. 161 prohibition, such as fail to provide the necessities of life, or aggravated assault against a child. Consequently, we suggest that other offences should added to the list of included offences, such as s. 215 (failure to provide the necessities of life), 279 (kidnapping), 293.2 (marriage under the age of 16 years). The CBA Sections also propose adding the following language:

“any other offence where the prosecutor applies for the order and establishes beyond a reasonable doubt that the person knew or was reckless as to whether the victim of the offence was under 18”.

**Section 15(2)** of the Bill adds what are commonly referred to as “deepfakes” to the definition of “intimate image” in s. 162.1(2) of the *Code*. The specific wording reads as follows:

(b) a visual representation that is made by any electronic or mechanical means and that shows an identifiable person who is depicted as nude, as exposing their sexual organs or as engaged in explicit sexual activity, **if the depiction is likely to be mistaken for a visual recording of that person.**

[Emphasis added]

The CBA Sections are concerned that this would not capture some “impossible or unrealistic images” that could nonetheless be considered distressing and harmful to the identifiable person, and society at large. Consider, for example, a “deepfake” of an identifiable person depicted as exposing their sexual organs while mounted on, or engaged in sexual activity with, an extinct or fictitious animal: this would not be captured by the current proposed definition. The definition as presently worded would also exclude graphic cartoons or drawings of identifiable persons. The CBA suggests removing the proviso “*if the depiction is likely to be mistaken for a visual recording of that person*”.

**Section 16** of the Bill deals with amendments to s. 162.2 of the *Code* (prohibition against using the Internet or another digital network). The CBA Sections suggest that this prohibition should be available for *any* offence, upon application by the prosecutor, where it is shown that a computer system was used in the commission of the offence. Other manners in which a restriction against using the Internet may be imposed include a probation order or a peace bond. The duration is limited to three years or less, in the case of a probation order, or one year or less for a s. 810 peace bond. Under s. 162.2 of the *Code*, the prohibition may be imposed “*for any period that the court considers appropriate, including any period to which the offender is sentenced to imprisonment*”. The CBA Sections also suggest incorporating a prohibition against possession and access to visual recordings made in the course of an offence.

Alternatively, if only enumerated offences are included in s. 162.2 of the *Code*, the CBA suggests adding the new s. 160(3.1) (publication, distribution, etc. of bestiality), s. 162.1 (non-consensual distribution of intimate images), s. 264.1 (utter threat), s. 264 (criminal harassment), s. 342.1 (unauthorized use of computer), s. 372 (false information, indecent communications, harassing communications), and s. 430(1.1) (mischief in relation to computer data).

**Section 18** of the Bill amends s. 164 of the *Code*, which deals with the seizure of certain illicit material. In the proposed amended s. 164(1)(b), this limits seizure of four categories of illicit material to instances where the material is “kept for sale or distribution”. The CBA Sections suggest that the materials in paragraph (b) of the proposed amended s. 164(8) (“*a visual recording, as defined in subsection 162(2), that is made as described in subsection 162(1)*”) should not be limited to distribution.

As recordings made contrary to s. 162(1) (voyeurism) are illegal, there is no reason why a person should be permitted to keep it.

As for the materials in paragraph (c) of the proposed amended s. 164(8) (“*an intimate image, as defined in subsection 162.1(2), in relation to which an offence was committed under section 162.1*”), layering on the requirement that the offender must continue to possess the intimate image for the purpose of sale or distribution is circular. The intimate image can be seized if the offender has committed a s. 162.1 offence, which means that the offender has already distributed or threatened to distribute the image.

The amendment to s. 164(7) purports to prohibit prosecution in relation to the illicit material seized. The construction of this section is unclear as to whether this would prohibit the prosecution of a different individual who possesses a digital copy of the material that was seized, or how a record of such orders would be kept or communicated to law enforcement agencies. If the intent is to prevent further prosecution of the individual from whom the illicit material was seized for that specific copy or item, the CBA Sections submit that it would need to be much more clearly worded and address the possibility that additional copies of the same material may exist, for which prosecution would be appropriate if the individual continues to distribute or possess them in future.

**Section 22** of the Bill adds extortion for a sexual purpose. This would include the new “threatening to distribute” child sexual abuse material (the proposed s. 163.1(4.21) of the *Code*). The CBA Sections note that this offence is not, however, also proposed to be added to s. 172.2 of the *Code* (“agreement or arrangement – sexual offence against child”). There is no logical reason that this should not be included in that offence as well.

**Section 69** of the Bill adds a new ancillary non-contact order. The CBA Sections question why this should be limited to sexual, intimate partner violence, harassment, and trafficking offences. This would exclude a victim of an attempted murder, for example.

## **VI. COERCIVE CONTROL & FEMICIDE**

### **A. New offence of coercion or control of intimate partner**

Bill C-16 introduces the new offence of “coercion or control of intimate partner” (or “coercive control”). The CBA Sections recognize this as a response to the ongoing crisis of gender-based violence and the cumulative harms coercive and controlling conduct inflicts on victims, including children and other family members. We also note that coercive and controlling behaviour is not confined to marriage or

common-law relationships, arising across a range of intimate relationships, including dating relationships and post-separation, a scope consistent with the *Divorce Act*. The CBA Sections support the concept of introducing an offence meant to capture a pattern of abusive conduct in an intimate partner relationship where clearly defined elements and narrow circumstances distinguish criminal and non-criminal conduct.

The CBA Sections also highlight that family violence cannot be fully addressed in the criminal justice system alone. This issue requires a multi-prong strategy that recognizes how the criminal and family justice systems are inextricably linked. Legislative change must be paired with investments in family court reform, including Unified Family Courts, to ensure urgent protection for victims, and functionality of the entire justice system.

Real investment must be made in societal-level approaches such as family law and community interventions to prevent a matter escalating to the point of a criminal charge. These interventions include resourcing for police forces to ensure that the new offence is properly investigated and utilized in the appropriate circumstances, as well as court resources as these prosecutions are likely to be lengthy and complicated. Increasing access to well-resourced social supports for victims and survivors of intimate partner violence is also essential to promoting safety, autonomy, and long-term stability.

While the criminalization of coercive control offers recognition of abusive patterns, it presents significant hurdles regarding definitional clarity, practical application, and the prevention of unintended consequences. The 2021 amendments to the *Divorce Act*, which expanded the definition of family violence to include “a pattern of coercive and controlling behaviour”, has led to challenges in family proceedings including a struggle regarding subjective and objective assessments, difficult issues of evidence, and the potential to weaponize the law against the survivors it is intended to protect. There will also be the need for education, training and wrap-around services to accompany the criminalization of coercive control.

The CBA Sections are concerned that the offence, as currently drafted, is vague and over-broad regarding the intended pattern of conduct. Because coercive control is inherently contextual and nuanced, there is a significant risk that the language used in the provision could be applied in unfair ways, capturing conduct that does not fall under the harm contemplated. For example, an alleged abuser might make strategic denials when corroborating evidence is scarce or argue that a parent is 'alienating' the children when they are just trying to protect them. There is a very real danger that a

survivor's protective parenting could be wrongly labeled as 'controlling' or even as a form of family violence itself.

We have identified four key areas of concern where the definition of “pattern of coercive and controlling behaviour” could be improved to provide clarity when this provision could be applied and to better distinguish criminal behaviour from merely *unwanted* behaviour.

First, while we recognize the offence envisions a specific intent behind the conduct, we propose a further limitation on the pattern by requiring reasonable foreseeability of the specified consequences. The CBA Sections suggest placing the language in subsection 264.01 (2)(c) into the substantive offence subsection 263.01(1): “with intent to cause their intimate partner to believe that the intimate partner’s safety is threatened ***and 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***”, whether directly or indirectly. This brings more specificity to the offence by injecting a reasonableness standard to assessing the intended consequences while still requiring specific intent.

Similarly, the CBA Sections are concerned by the inclusion of “threatening to die by suicide or to self-harm” in subsection 2(c)(vii) as an act that can form a part of the pattern of coercive or controlling conduct. While such conduct could be a manipulation tactic, there is a real risk of criminalizing what may be mental illness or treating this conduct in a way that is unfair.

Second, we oppose the inclusion of a recklessness standard for the *mens rea* of this offence.

Recklessness disconnects criminal liability from intentional wrongdoing, which risks overcriminalization, unfairness, and constitutional vulnerability. Because the pattern of conduct being criminalized is intentionally flexible and contextual, specific intent must be required to ensure the law is responsive to the dynamics of the relationship. Furthermore, as such conduct often occurs in highly emotional contexts, a recklessness standard is not suitable for a nuanced crime.

Third, there are no temporal limitations placed on the pattern. While this makes sense in other contexts, such as the dangerous offender regime, that are concerned with prospective risk, here there is no direction as to whether the acts constituting the pattern must be temporally connected or can be spread out over several years. Clarity should also be provided that the pattern is not restricted to when

the intimate partner relationship is ongoing but should also extend to periods following dissolution of the relationship, although the length of this period may require assessment on a case-by-case basis.<sup>29</sup>

Fourth, there is insufficient direction on the frequency of the conduct required to establish a pattern. The current language in subsection (2) “any combination, or repeated instances, of any of the following acts” is insufficient. While the shift toward a pattern-based approach aligns the *Criminal Code* with the *Divorce Act*, the lack of a clear threshold for frequency creates significant risks in the criminal law context. This is unlike the dangerous offender context, in which even two acts have been found to constitute a pattern. This presents a risk and a low bar to intimate partner relationships, where complex dynamics risk capturing unrelated incidents that do not merit criminal sanctions.

### **B. New constructive first-degree murder for femicide and other aggravated circumstances**

The CBA Sections support the introduction of constructive first-degree murder under the proposed s. 236(5.1)(a) and (b). However, we note that coercive or controlling relationships can exist in the context of any intimate partner relationship, regardless of gender. We suggest that the concepts of femicide and coercive and controlling conduct should be kept distinct.

The CBA Sections do not support subsection (c) “while committing or attempting to commit an offence of a sexual nature or of a sexual purpose”. Sexual assault is currently already a predicate offence for constructive first-degree murder. The language of (c) is overly vague and covers a broad range of conduct from more minor offences to more serious.

### **C. Manslaughter sentencing for femicide and other aggravated circumstances**

The CBA Sections are concerned that the proposed femicide-related manslaughter sentencing provisions *require* a sentencing judge to consider imposing a life sentence for manslaughter in cases characterized as femicide or in other aggravated circumstances.

Sentencing in Canadian criminal law is a highly individualized exercise. Life sentences are rare and ordinarily reserved for the most serious offences, namely first- and second-degree murder, where the

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<sup>29</sup> See *Code* s. 2: definition of *intimate partner* -with respect to a person, includes their current or former spouse, common-law partner and dating partner; (*partenaire intime*)

Crown has proven beyond a reasonable doubt that the offender intended to cause the death of another person. Manslaughter, by its very nature, means proof of intent to kill does not exist.

Requiring sentencing judges to consider the maximum possible for manslaughter places an unjustified and unnecessary limit on judicial discretion. Sentencing judges are already aware of the full range of sentences available for manslaughter. In practical terms, the proposed provision would not provide a meaningful change to the sentencing analysis. Rather, it would oblige judges to hear submissions and expressly explain on the record why a life sentence should not be imposed for a manslaughter offence. This amounts to unnecessary use of scarce court time and does not change the way judges will ultimately arrive at a fit and proportionate sentence. Nor does this alter the common law principles governing appropriate sentencing ranges for manslaughter. Further, such a provision would hamstring plea negotiations between defence and Crown when a judge is bound to consider a life sentence in the context of a joint submission on sentence.

#### **RECOMMENDATION**

**Femicide and coercive control be expressly recognized as statutory aggravating factors applicable to homicide offences. This approach would appropriately ensure that such conduct is considered at sentencing, while preserving judicial discretion and avoiding the imposition of an artificial requirement to consider a specific sentence solely based on offence characterization.**

### **VII. RESTORATIVE JUSTICE & ALTERNATIVE MEASURES; CANADIAN VICTIM BILL OF RIGHTS**

#### **Provisions dealing with Restorative Justice and Alternative Measures**

The CBA Sections support the provisions establishing a framework for applying alternative measures and restorative justice processes. These provisions reflect an understanding that justice is not always achieved through harsher penalties or the traditional criminal justice prosecution, and that some harms require alternative responses. They encourage accountability, the acknowledgment and acceptance of responsibility for harm caused to victims and communities, and reparation of that harm. They also provide clarity and guidance on the appropriate use of such measures and processes. Importantly, broadening access to restorative justice options can help alleviate the "already-overburdened" criminal justice system and reduce systemic delays by diverting appropriate cases out of the court process, while preserving scarce judicial resources for matters that strictly require criminal prosecution.

## A. Victim participation and information rights

Several amendments to the *Canadian Victims Bill of Rights* also deserve credit. The bill improves victims' access to information without requiring them to repeatedly request it, clarifies their right to be treated with respect and fairness, and broadens their access to information about restorative justice options. These changes are modest, but practical. They reduce the administrative burden placed on victims and acknowledge that participation in the justice system should not require constant self-advocacy to obtain basic updates or explanations.

The CBA Sections, however, identify a further gap for consideration: the lack of guaranteed interpretation services for victims' families during proceedings, especially in cases of homicide. Currently, if the accused elects for a trial in a language the victim's family does not speak, the family is effectively barred from understanding the process. The CBA Sections propose the inclusion of a statutory guarantee in the Bill that interpretation will be provided to victims' families.

## VIII. AMENDMENTS TO THE YOUTH CRIMINAL JUSTICE ACT

The CBA Sections support the *Youth Criminal Justice Act* (YCJA) amendments in Bill C-16 as a modernization consistent with Supreme Court of Canada youth justice jurisprudence. The amendments strengthen recognition of victims' rights and safety and update the understanding of violence to include sexualized and coercive harm, while preserving the YCJA's constitutional foundations. Bill C-16 respects the presumptive diminished moral blameworthiness of young persons that was affirmed in *R v D.B.*, maintains rehabilitation and reintegration as primary objectives as required by *R v L.T.H.*, and leaves intact the principle that custody must remain a last resort pursuant to *R v B.W.P.* and *R v B.V.N.*<sup>30</sup> The amendments clarify the nature and impact of harm without altering sentencing ceilings, expanding presumptive detention, or undermining the distinct, youth-specific structure of the YCJA.

At the same time, the principal concern with Bill C-16 lies in what it leaves unaddressed.<sup>31</sup> The Bill approaches youth justice largely through a victim-rights lens, with limited engagement with

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<sup>30</sup> *R v D.B.*, 2008 SCC 25, [2008] 2 SCR 3, online at: <https://canlii.ca/t/1wxc8>; *R v L.T.H.*, 2008 SCC 49, [2008] 2 SCR 739, online at: <https://canlii.ca/t/20m8f>; *R. v. B.W.P.*; *R. v. B.V.N.*, 2006 SCC 27 (CanLII), [2006] 1 SCR 941, online at: <https://canlii.ca/t/1nn6n>.

<sup>31</sup> Bill C-16 approaches youth justice largely through a victims' rights framework, including references aligned with the *Canadian Victims Bill of Rights*, without corresponding engagement with children's fundamental human rights under international law and global standards such as the Beijing Rules, Havana Rules, and Riyadh Guidelines.

children’s broader human rights under international conventions and established global standards, including the Beijing Rules, Havana Rules, and Riyadh Guidelines.<sup>32</sup> Incremental references to restorative justice fall short of implementing recent guidance from the UN Committee on the Rights of the Child on comprehensive, child-centred justice reform.<sup>33</sup> Bill C-16 does not raise the minimum age of criminal responsibility, eliminate the prosecution of children as adults, foreclose the application of mandatory minimum sentences to youth, prohibit solitary confinement in youth detention, or ensure that diversion and case-conferencing become the norm rather than the exception, particularly in cases of Indigenous youth. Nor does it meaningfully invest in proactive, developmentally appropriate supports to address harmful behaviour both above and below the age of criminal responsibility.

Absent broader, child-centred reforms addressing the gaps identified above, careful attention will be required at the implementation stage to prevent the amendments from producing unintended and potentially harmful effects in youth justice practice. The expanded recognition of psychological, sexual, and relational harm—while conceptually sound—carries a risk of net-widening if applied without developmental sensitivity. In youth contexts, allegations of patterns of coercive or controlling behaviour should be grounded in clear, contextual evidence over time, rather than inferred from episodic conflict or isolated incidents. Ongoing data collection on charging decisions, use of extrajudicial measures, pre-trial detention, and sentencing outcomes will be essential to assess alignment with the YCJA’s rehabilitative purpose and to identify unintended consequences at an early stage.

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See: Committee on the Rights of the Child, Office of the United Nations High Commissioner for Human Rights (OHCHR), online: <https://www.ohchr.org/en/treaty-bodies/crc>; *R. v. B.W.P.*; *R. v. B.V.N.*, 2006 SCC 27 (CanLII), [2006] 1 SCR 941, online at: <https://canlii.ca/t/1nn6n>.

<sup>31</sup> *Canadian Victims Bill of Rights* (S.C. 2015, c. 13, s. 2), online at: <https://laws-lois.justice.gc.ca/eng/acts/c-23.7/page-1.html>; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”), GA Res 40/33, UN GAOR, 40th Sess, Supp No 53, UN Doc A/40/53 (1985); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the “Havana Rules”), GA Res 45/113, UN GAOR, 45th Sess, Supp No 49, UN Doc A/45/49 (1990); United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”), GA Res 45/112, UN GAOR, 45th Sess, Supp No 49, UN Doc A/45/49 (1990).

<sup>32</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) GA Res 40/33, UNGAOR, 40th Sess, Supp No 53, UN Doc A/RES/40/33 (29 November 1985): [online](#); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules”), GA Res 45/113, UNGAOR, 45th Sess, Supp No 49, UN Doc A/RES/45/113 (14 December 1990): [online](#); and United Nations Guidelines for the Prevention of Juvenile Delinquency (“Riyadh Guidelines”), GA Res 45/112, UNGAOR, 45th Sess, Supp No 49, UN Doc A/RES/45/112 (14 December 1990): [online](#).

<sup>33</sup> UN Committee on the Rights of the Child, General Comment No 24 (2019) on children’s rights in the child justice system, UN Doc CRC/C/GC/24 (18 September 2019); [online](#).

**IX. CONCLUSION**

In implementing the proposed reforms of Bill C-16, it is essential that legislative changes not only uphold principled goals but also operate effectively within the realities of day-to-day legal practice. The CBA therefore urges that these amendments be drafted and administered with clarity, consistency, and feasibility in mind, ensuring that practitioners can apply them efficiently and predictably across jurisdictions. By grounding reform in both principle and practice, Parliament can help ensure that Bill C-16 delivers tangible improvements to justice delivery and public confidence in Canada's legal system.