

## Proposed Amendments to Bill C-16

### A brief on Bill C-16, An Act to amend certain Acts in relation to criminal and correctional matters (child protection, gender-based violence, delays and other measures)

Submitted to the House of Commons Standing Committee on Justice and Human Rights by

Barbra Schlifer Commemorative Clinic (BSCC)  
Women's Legal Education and Action Fund (LEAF)<sup>1</sup>



**LEAF**  
**FAEJ**

WOMEN'S LEGAL  
EDUCATION & ACTION FUND  
FONDS D'ACTION ET D'ÉDUCATION  
JURIDIQUE POUR LES FEMMES

---

<sup>1</sup> Rosel Kim (Senior Staff Lawyer, LEAF), Kat Owens (Legal Director, LEAF), Tamar Witelson (Director of Legal Services, Schlifer Clinic), and Raneem Yaseen (Project Lawyer, Schlifer Clinic) are the primary authors of this submission. Contributors to this submission include (in alphabetical order): Moira Aikenhead (only in relation to deepfakes), Jane Bailey (only in relation to deepfakes), Gillian Bourke, Vanshika Dhawan, Theresa Donkor, Suzie Dunn, Gillian Hnatiw, Ashna Hudani, Deepa Mattoo, and Megan Stephens.

## Introduction

As organizations advancing gender equality who work with and on behalf of survivors of gender-based violence, we are encouraged that the Federal government has put forward legislation to address gender-based violence and survivors' experiences in the criminal legal system.

We agree that it is critical to address gender-based violence in Canada. That said, we have been advocating for policy responses addressing the root causes of gender-based violence through systemic and multi-pronged approaches including: education, social and economic supports for survivors so they can leave abusive and violent situations and heal without worrying about their safety and basic needs, and increased resources and training for courts that would prevent unnecessary delays and myths-based judicial decisions.

We hear calls for criminal law reform, including from survivors, and we understand where those calls come from. Too many women and gender-diverse people face gender-based violence, including coercive control, physical violence, sexual violence, technology-facilitated abuse, and femicide. Existing criminal law responses to gender-based violence often fail to protect survivors, and in many instances, retraumatize them.

At the same time, expanding criminal law is not the answer. Even well-intentioned laws can have unintended consequences. Criminalizing conduct or creating harsher penalties, without explicit survivor-centred safeguards, risks the further criminalization of survivors. Criminal law alone cannot end gender-based violence. We need to invest in preventative measures that stop gender-based violence before it happens.

This brief provides comments and suggested amendments on Bill C-16, but we urge you to look beyond criminal law in your legislative, policy, and funding responses to the ongoing epidemic of gender-based violence in this country.

## Overview of Submission

Our organizations support the following components of Bill C-16:

- Increased access to testimonial supports for victims and witnesses in proceedings concerning sexual offences, criminal harassment, trafficking, and intimate partner violence as reflected in proposed *Criminal Code* sections 486.1, 486.2, and 486.3
- Increased access to testimonial supports for victims and witnesses in proceedings concerning violent offences, sexual offences, criminal harassment, trafficking, and coercive control as reflected in proposed *National Defence Act* sections 183.1, 183.2, and 183.3
- Increased emphasis on restorative justice processes
- Expanding the definition of intimate image in *Criminal Code* section 162.1(2)(b) to include deepfakes

Our organizations have observations about the following components of Bill C-16:

- Femicide, including of an intimate partner, and other aggravating circumstances
- Coercion or control of an intimate partner

Our organizations have recommended amendments to enable Bill C-16 to better support women and gender-diverse people in Canada:

- Broaden the safety valve for mandatory minimum sentences, include a gender-based analysis, and do not reintroduce mandatory minimums that have already been struck down
- Strengthen protections for complainants and guard against delay in changes to procedural rules in sexual offence trials
- Maintain the wording of the offence of criminal harassment as it currently reads
- Broaden the definition of deepfakes to ensure it appropriately captures the harms of these images
- Remove barriers to restorative justice by limiting the use of statements made during them
- Work with provinces and territories to lessen delays in the criminal legal system

## **Observations on Femicide and Coercive Control**

### **(a) Femicide, Including of an Intimate Partner, and Other Aggravated Circumstances**

Recognizing femicide as a distinct form of violence that differs from homicide acknowledges the gendered nature of violence that disproportionately affects women and gender-diverse people.

However, the use of the term femicide in the *Criminal Code* alone will not be enough to end this violence. We emphasize the need for:

- Systematic collection and public reporting of disaggregated data on gender-related killings, to better understand the prevalence of this form of violence and to enable better prevention strategies.
- Improved recognition of patterns in intimate partner and family violence to enable earlier intervention.
- Increased accountability in legal and policing systems that have historically failed to protect women, girls, and gender-diverse people, particularly those who are racialized, Indigenous, disabled, and/or facing other intersecting forms of marginalization.
- Better recognition of and response to the underlying causes of gender-based violence, including misogyny, colonialism, racism, homophobia, transphobia, ableism, and other forms of oppression.

We also stress the importance of survivor-centered safeguards to ensure that women and gender-diverse people accused of killing an abusive partner are not improperly charged with or convicted of first degree murder because of proposed section 231(5.1) of the *Criminal Code*, or

faced with the possibility of a life sentence if convicted for manslaughter due to proposed section 236(2) of the *Criminal Code*.

### **(b) Coercion or Control of an Intimate Partner**

Coercive control is a persistent and insidious form of violence that must be recognized. However, given the significant challenges presented, criminalization of the concept will not facilitate tangible access to justice or safety without systemic change. In practice, survivors are often misidentified as the primary aggressor - especially when law enforcement rely strictly on individual incidents of violence rather than patterns of coercive control.

As outlined in LEAF's 2023 position paper,<sup>2</sup> arguments in favour of criminalizing coercive control include greater awareness of the dynamics of intimate partner violence, the potential to provide validation for some survivors of violence, and a legal recognition of patterns of abuse that could improve the legal system's response to violence.

However, the creation of a new offence does not affect all survivors in the same way, nor does it provide the same level of access or protection.<sup>3</sup> BSCC's position paper<sup>4</sup> notes that criminalizing coercive control does not confront the underlying cause of gender-based violence, nor does it address the barriers that prevent survivors from reporting the violence committed against them. Rather, we are concerned that a new criminal offence of coercive control may lead to charges against survivors – as we've observed with mandatory charging policies – and that the impact of a new criminal offence will be felt more deeply by members of marginalized groups, who are already disproportionately surveilled, targeted and punished.<sup>5</sup>

Coercive control is a nuanced concept which captures a wide range of behaviours. Policing coercive control relies on law enforcement's recognition and ability to identify these behaviours,<sup>6</sup> which can appear in different forms and subtleties based on the specific context and dynamics of an interpersonal relationship. There is a risk that the particularities of this abuse may be misinterpreted, missed, or wrongly identified when not present, if viewed by law enforcement through an existing lens of institutionalized stereotypes and racism.<sup>7</sup> Patterns of abuse specific to a woman's individual context with respect to disability, beliefs, or cultural practices may not be understood as abuse and coercive control (for example, controlling access to disability accommodations or denying participation in faith practices). Indigenous and Black communities

---

<sup>2</sup> See "[Position Paper on the Criminalization of Coercive Control](#)" (2023).

<sup>3</sup> See Janet Mosher et al, "[Doing More, Doing Better? A Critique of the Criminalization of Coercive Control](#)" (13 Jun 2025) for a discussion of the potential effects of criminalization on Black women in particular.

<sup>4</sup> See "[Bill-C-202-and-Bill-C-332-Position-Paper.pdf](#)" (2023).

<sup>5</sup> Mass Casualty Commission, *Turning the Tide Together: Final Report of the Mass Casualty Commission, Volume 3: Violence* (2023) at 387.

<sup>6</sup> House of Commons Standing Committee on Justice and Human Rights: Study on Bill C-247, 43<sup>rd</sup> Parliament, 2<sup>nd</sup> session, [Brief, February 2021](#) (Carmen Gill and Mary Aspinall) at 4.

<sup>7</sup> Sandra Walklate, Kate Fitz-Gibbon & Jude McCulloch, "Is More Law the Answer? Seeking Justice for Victims of Intimate Partner Violence through the Reform of Legal Categories" (2018) 18:1 *Criminology & Criminal Justice* 115.

have raised additional fears around the potential misidentification of women as the primary aggressors by police officers.<sup>8</sup>

There is also concern that abusers will manipulate the criminal process, leading to charges of coercive control against survivors. The history of mandatory charging policies demonstrates that policies designed to protect gender-based violence survivors have instead been used to punish them. These policies led to a significant increase in arrests of female survivors, particularly amongst racialized groups.<sup>9</sup> It is also crucial to note that creating new criminal offences without clear survivor-centred safeguards can also widen the net of survivors that are exposed to criminalization. Therefore, the creation of a new offence of coercive control can risk subjecting survivors to further violence through the law.

It is also likely that the creation of a new offence will raise difficulties in appropriate evidentiary collection and successful prosecution. Many coercive control tactics lack physical evidence to corroborate the extent of the violence, thus heightening the role of the survivor in providing evidence.<sup>10</sup> Providing compelling evidence of psychological harm to meet the high burden of proof required in a criminal proceeding is likely to be very difficult.<sup>11</sup> Evidentiary requirements also risk retraumatizing survivors who are forced into the position of having to prove their abuse; counter myths and stereotypes; address the minimization of their experience of abuse; and defend against challenges to their credibility.

In this context, we emphasize the need for:

- Federal, provincial and territorial governments taking a proactive approach in focusing on the prevention of intimate partner violence.
- Exploration of restorative and transformative justice models as a response to intimate partner violence.
- The provision of mandatory and ongoing training to law enforcement, Crowns, and judges on coercive control and systemic bias, with accountability measures to ensure regular follow-up and evaluation on whether training is being meaningfully applied.

---

<sup>8</sup> CK Cross; Courtney Hobson, Michael Salter & Jennifer Stephenson, "The Contributions of First Nations Voices to the Australian Public Debate over the Criminalization of Coercive Control" (2023) *bcad140 British Journal of Social Work* ('Hobson')

<sup>9</sup> CK Cross; Patrina Duhaney, "Criminalized Black women's experiences of intimate partner violence in Canada" (2022) 28(11) *Violence Against Women* 2765.

<sup>10</sup> Courtney K Cross, "Coercive Control and the Limits of Criminal Law" (2022) 56 *UC Davis Law Review* 195 at 238.

<sup>11</sup> Sandra Walklate, Kate Fitz-Gibbon & Jude McCulloch, "Is More Law the Answer? Seeking Justice for Victims of Intimate Partner Violence through the Reform of Legal Categories" (2018) 18:1 *Criminology & Criminal Justice* 115.

## Proposed Amendments to Bill C-16

- (a) **Broaden the safety valve for mandatory minimum sentences, apply a gender-based analysis and do not reintroduce mandatory minimums that have already been struck down**

**Recommendation:** amend proposed *Criminal Code* section 718.4 to allow for the full range of possible sentences, not just shorter terms of imprisonment, where, in the circumstances, the minimum punishment would amount to cruel and unusual punishment for the person who is being sentenced. Include a gender-based analysis in assessing both the harm of the offence and the context of the person being sentenced. At a minimum, include a carve-out in line with section 718.2(e) of the *Criminal Code* such that all available sanctions, *including those other than imprisonment*, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all people being sentenced, with particular attention to the circumstances of Aboriginal offenders.

**Recommendation:** remove proposed *Criminal Code* section 87 and do not reintroduce mandatory minimums that have already been struck down.

### **Rationale:**

Mandatory minimum sentences do not deter crime.<sup>12</sup> At the same time, they contribute to the significant incarceration and over-policing faced by members of marginalized communities, with unique gendered impacts for women.<sup>13</sup>

The negative impact of mandatory minimum sentences is particularly true for Indigenous communities. The government's own data indicates persistent and worsening incarceration rates for Indigenous persons in Canada:

- In the six provinces with available 2023/2024 data (Prince Edward Island, Nova Scotia, Ontario, Saskatchewan, Alberta, and British Columbia), Indigenous adults were incarcerated at a rate 10 times higher than non-Indigenous adults. Each year from 2019/2020 to 2023/2024, overrepresentation of Indigenous adults in custody increased.
- Overrepresentation is worse for Indigenous women than Indigenous men. Indigenous adult women made up 42% of female provincial/territorial custody admissions in 2020/2021 despite making up only 4% of the population. The picture is even worse for federal custody, with Indigenous women making up 49% of 2022/2023 admissions to

---

<sup>12</sup> See e.g., Anthony N. Doob, Cheryl Marie Webster, and Rosemary Gartner, "[Issues Related to Harsh Sentences and Mandatory Minimum Sentences: General Deterrence and Incapacitation](#)" (2014) Criminological Highlights.

<sup>13</sup> This is both through requiring longer sentences than might otherwise be imposed, and by putting pressure on individuals to plead guilty to a lesser offence even where they may have a viable defence. Debra Parkes, for example, points to women who kill abusive partners pleading guilty to manslaughter despite the existence of a viable self-defence claim to avoid the risk of the mandatory minimum sentence for murder (Debra Parkes, "[Mandatory minimum sentences for murder should be abolished](#)", *The Globe and Mail* (25 September 2018). See also Debra Parkes, "[Women in Prison: Liberty, Equality, and Thinking Outside the Bars](#)" (2016) 12 *JL & Equality* 127.

federal custody. From 2019/2020 to 2023/2024, incarceration rates for Indigenous women increased by 22%. During the same time period, they declined by 11% for non-Indigenous women.<sup>14</sup>

It is also true for Black communities, as similarly reflected in the government's own data:

- In the four provinces with available 2023/2024 data (Nova Scotia, Ontario, Alberta, and British Columbia), Black people made up 12.8% of the custodial population on an average day despite making up only 3.3% of the overall population.
- Overrepresentation is worse for Black men than Black women, but Black women are still incarcerated at a rate 1.2 times higher than for white women. The situation is most unequal in Nova Scotia, where Black women are incarcerated at a rate 3.5 times higher than for white women.<sup>15</sup>

Mandatory minimum sentences contradict the principles set out in section 718.2(e) of the *Criminal Code* and case law<sup>16</sup> in which courts have taken judicial notice of systemic anti-Black racism, including over-incarceration, to achieve a sentence that reflects the purposes of sentencing as described in section 718 of the *Criminal Code*. By prohibiting judges from considering non-custodial sentences where a mandatory minimum sentence exists, Bill C-16 will worsen systemic inequality for Indigenous and Black communities in Canada.

For example, Bill C-16 would bar judges from considering conditional sentences where a mandatory minimum sentence exists. When they are imposed and carried out lawfully, however, conditional sentences are a particularly important tool for combating systemic discrimination against Black and Indigenous women in the Canadian criminal justice system.

For Indigenous women convicted of an offence, a conditional sentence may be an option that better resonates with their sense of justice. Many, if not all, Indigenous legal traditions include “principles and mechanisms that can be described as promoting community healing, reconciliation, and the reintegration” of the person who has done wrong.<sup>17</sup>

While conditional sentences can provide Black and Indigenous women with the ability to remain connected to their communities and receive culturally appropriate supports, custodial sentences produce a far different outcome. For example, federally-incarcerated Black women have reported significant disconnect from their family members, lack of access to culturally appropriate hygiene products, and inadequate religious and spiritual supports.<sup>18</sup> Federally-incarcerated Indigenous women face biased risk assessment tools, making them much more

---

<sup>14</sup> “[Overrepresentation of Indigenous and Black adults in provincial and federal custody](#)” (14 Jan 2026), online: Statistics Canada.

<sup>15</sup> *Ibid.*

<sup>16</sup> See *R v Morris*, 2021 ONCA 680, and *R v Anderson*, 2021 NSCA 62.

<sup>17</sup> Larry Chartrand and Kanatase Horn, [A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada](#) (Ottawa: Department of Justice Canada, 2016) at 3.

<sup>18</sup> Canada, Office of the Correctional Investigator, [A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries, Final Report](#) (Ottawa: Office of the Correctional Investigator, 2013) at paras 19-20.

likely to receive both the highest security classification on arrival and the lowest reintegration score during their sentence.<sup>19</sup> This then negatively impacts their chances of being paroled.

Imposing custodial sentences on Black and Indigenous women who are mothers or caregivers of children has additional, devastating effects not only on them but also their children and communities. For instance, sixty-four percent of incarcerated Indigenous mothers are single parents.<sup>20</sup> Consequently, the over-incarceration of Indigenous women contributes to the overrepresentation of Indigenous children in the foster care system.<sup>21</sup>

### **(b) Strengthen protections for complainants and guard against delay in changes to procedural rules in sexual offence trials**

We appreciate the desire to clarify and streamline the complex procedural rules in sexual offence trials. However, we have heard significant concerns from counsel working with complainants about the risks of increased complexity, delay, and constitutional vulnerability occasioned by the proposed amendments in Bill C-16. If the intended changes are to proceed, we would recommend the following amendments.

#### *i. Admissibility of Sexual History Evidence and Admissibility of Record - Joint Applications*

**Recommendation:** amend proposed *Criminal Code* sections 276.1 and 278.35 to provide complainants with a clear statutory right to counsel from the outset of the joint application process. Make similar amendments to proposed *National Defence Act* sections 180.007 and 180.2.

#### **Rationale:**

Currently, where an accused brings an application under section 276.01 for a hearing under section 276.02 regarding the admissibility of sexual activity evidence, the complainant has the right to appear and make submissions. The judge must, as soon as feasible, inform the complainant of their right to be represented by counsel. The same is true where an accused brings an application under section 278.3 for a hearing under section 278.31 regarding the admissibility of records.

---

<sup>19</sup> Tom Cardoso, "[For Indigenous women, systemic racial bias in prison leaves many worse off than men](#)", *The Globe and Mail* (31 December 2020).

<sup>20</sup> Heather Lawson, "[Decriminalizing Race: The case for investing in community and social support for imprisoned racialized women in Canada](#)" (Ottawa: Canadian Centre for Policy Alternatives, 2020) at 18.

<sup>21</sup> While Indigenous children make up only seven percent of all children in Canada, they account for 48 percent of all children in the foster care system (Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, [Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1A](#) (Vancouver: Privy Council, 2019) at 637). More Indigenous children are placed in foster care each year than attended residential school in any one year (Canada, Truth and Reconciliation Commission of Canada, [The Final Report of the Truth and Reconciliation Commission of Canada, vol 5, Canada's Residential Schools: The Legacy](#) (Montréal: McGill-Queen's University Press, 2015) at 53).

For joint applications for the same types of evidence/records, there is no indication that the complainant has a right to be represented by counsel. However, it is important for complainants to have access to legal advice to decide whether to make a joint application in the first place, as well as to make submissions on any joint application.

*ii. Admissibility of Sexual History Evidence - Procedure for Prosecutor*

**Recommendation:** where a prosecutor brings an application for a hearing under section 276.06 to determine whether evidence of sexual activity is admissible under section 276(2), require a copy of the application to be given to the complainant at least 60 days before the hearing or within any shorter interval that the judge, provincial court judge or justice may allow in the interests of justice. Provide complainants with independent legal advice and standing during this process.

**Rationale:**

Unlike the procedure for applications to admit evidence of sexual activity brought by the accused, there is no requirement to provide the complainant with a copy of a prosecutor's application to admit the same evidence. There is also no right for the complainant to be represented by counsel.

This appears to assume that prosecutors will always act in alignment with complainants' rights and interests. However, prosecutors do not represent complainants. There will be times when prosecutors and complainants properly have diverging interests. Prosecutors may also be overburdened, lack awareness of complainant rights, or engage in myths-based reasoning.

In addition, prosecutors should not and cannot have the right to waive complainants' privacy and equality rights. Complainants must get to make that decision, informed by independent legal advice.

As a result, it is critical that complainants have a right to notice of these applications. They should also have the right to be represented by counsel of their choice and make submissions to address situations where their interests and those of the prosecution conflict.

*iii. Records and Therapeutic Records in the Possession of the Prosecutor - Permitted Disclosure*

**Recommendation:** proposed *Criminal Code* section 278.2(2)(c), regarding the prosecutor's disclosure of communications to the accused, should add the requirement "if the complainant agrees to its disclosure to the accused". This is similar to the previous section regarding disclosure of records to the accused, in section 278.2(2)(b). We also recommend that the Committee consider adding the opportunity for the complainant to receive independent legal advice before deciding whether to give consent to the prosecutor for any disclosure under section 278.2.

**Rationale:**

We are concerned about proposed section 278.2(2)(c), particularly the language stating the prosecutor *may* disclose to the accused any communication between the complainant and the accused, with no need to obtain consent from the complainant. This is in contrast to the requirement in section 278.2(2)(b) in reference to records and therapeutic records.

At the point of making a police report, in an effort to be believed and persuade police to lay a charge, complainants often provide the police with sensitive records and communications with the accused such as text messages, emails, or photographs. Complainants rarely get legal advice before making these early disclosures. The police will then provide these records and communications to the prosecutor, triggering the application of this proposed section.

Our concern is that complainants often do not have knowledge about the benefits of independent legal advice or the impact on their privacy interests related to these disclosures, prior to providing records and communications to the police. We believe complainants should have the agency to decide whether the prosecution will disclose their records and communications to the accused, making section 278.2(2)(c) consistent with section 278.2(2)(b).

*iv. Production to Accused of Records and Therapeutic Records in the Possession of Third Party or in the Possession of the Prosecutor - Application for Production*

**Recommendation:** amend proposed sections 278.12(1) and 278.21 to say that an accused must make an application for production “*where possible*” to the judge before whom the accused is to be, or is being, tried so that having the same judge is not mandatory.

**Rationale:**

We appreciate that it would be beneficial to have the same judge hear the application as will hear the case. However, this requirement may not be realistic in all jurisdictions given different capacities and resources. For example, judges may rotate in and out of smaller or more remote jurisdictions, meaning it could delay proceedings to require the same judge hear the application and the trial. This risks potential stays for unreasonable delays.

*v. Service on the Complainant*

**Recommendation:** amend proposed *Criminal Code* and *National Defence Act* provisions prohibiting personal service by the accused on the complainant to clarify who needs to serve the complainant. For example, the defence must serve the Crown, and the Crown must provide the application to the complainant.

**Rationale:**

Proposed *Criminal Code* sections 278.12(7) and 278.2(7) and proposed *National Defence Act* sections 180.03(7) and 180.1(7) prohibit personal service by the accused on the complainant. We support measures to ensure complainants are served and to minimize contact between the accused and the complainant. However, without clarity on who is responsible for service, this could lead to unintended delays. Without explicitly assigned responsibility, service to the

complainant may be delayed as the Crown and defence debate whose responsibility it is to serve the complainant.

vi. *Prevent Distribution of Complainant's Intimate Images at Stage 1 of Section 276 and Section 278 Applications*

**Recommendation:** consider amending *Criminal Code* sections 276 and 278 to prohibit the distribution of the complainant's intimate images at stage 1 of the defence application and direct Crown Counsel to refuse service of materials that include intimate/nude images of the complainant.

**Rationale:**

Members of the criminal bar who provide independent legal advice to and represent sexual assault complainants in section 276 and section 278 applications have observed a concerning issue: the distribution of the complainant's nude/intimate images in the course of criminal prosecutions by defence counsel, which may be a violation of section 162.1 of the *Criminal Code*.

Complainants in sexual violence prosecutions have standing at stage 2 of pre-trial applications under sections 276 (other sexual activity) and 278.92 (records in the possession of the accused) of the *Criminal Code*. Complainants do not have standing at stage 1 and only receive a copy of the application materials if the matter advances to a stage 2 hearing.

In 2025, we have learnt of three occasions where defence counsel served complainant's counsel with stage 2 materials containing nude/intimate images of the complainant. At this stage of the application process, the **images have already been viewed** by the defence lawyer, court staff, the Crown, and the judge, and made an exhibit at the stage 1 hearing. Sometimes the exhibits are not sealed. No one appears to have raised concerns about the distribution of these images prior to complainant's counsel involvement at this later stage in the proceedings. It is unclear how wide this practice is. There may be applications dismissed at stage 1 where the complainant is not ever informed that her nude/intimate images were circulated and filed with the court.

It is both distressing and retraumatizing for complainants to learn that their nude/intimate images have been distributed without their knowledge or consent during the criminal proceedings. Worse, the distribution is also unnecessary. Many senior defence counsel file redacted materials or insert descriptions of the images rather than filing the images themselves, in order to respect the complainant's privacy rights and dignity.

Complainants should not have to testify in a courtroom filled with staff, lawyers, and a judge who have unnecessarily viewed their naked/intimate images. It is humiliating, impedes their ability to testify, and violates their privacy, dignity, and equality rights, especially where a judge has determined that the intimate images are not admissible – yet they have already been distributed and viewed by justice system participants.

**(c) Maintain the wording of the offence of criminal harassment as it currently reads**

**Recommendation:** do not replace the subjective fear requirement for the offence of criminal harassment in *Criminal Code* section 264(1) with an objective fear requirement.

**Rationale:**

A charge of criminal harassment is often weaponized against survivors by abusive partners. It can be used in situations where survivors of abuse repeatedly contact ex-partners with concerns about the other parent's care of children or their failure to respect family court orders. If an ex-partner contacts police in these circumstances, police may give a caution which is perceived as a threat of a charge of criminal harassment "the next time" the abuser reports to police. This dynamic perpetuates control and abuse.

The amendment may exacerbate this systemic abuse by increasing the likelihood of laying a charge in these circumstances. The amendment proposes to change the current test of subjective fear of harm to a reasonable expectation that the impugned conduct will cause a person to believe that their safety, including psychological safety, or the safety of anyone known to them is threatened.

Assessing fear objectively can fail to account for power imbalances between an abuser and survivor. Further, social and systemic bias and stereotypes may influence an "objectively" reasonable expectation of harm, disproportionately affecting historically marginalized groups, including racialized and Indigenous communities and those viewed as struggling with mental health issues.

The proposed amendment also raises questions about the interaction between the test for the offence of criminal harassment and the test for obtaining protection orders, such as peace bonds or family court restraining orders, where the test is a reasonable subjective fear for safety.

**(d) Broaden the definition of deepfakes to ensure it appropriately captures the harms of these images**

**Recommendation:** proposed *Criminal Code* section 162.1(2)(b) defines an "intimate image" as including "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**." Remove the bolded and underlined part of the definition. Also, consider replacing "who" with "whose body" so the realistic quality of the image is focused on the body of the person, rather than the whole context of the image.

**Rationale**

Defining deepfakes as only ones that are realistic enough to be mistaken for the person conceptualizes the harms of deepfakes too narrowly.

We have seen deepfakes that may not be realistic enough to be mistaken for the people depicted, yet still cause significant harm through overt sexualization and degradation. In other cases, deepfakes may be highly realistic but incorporate a single element that makes it clear that it is not a real visual recording (e.g., the person has a unicorn horn or is engaged in sexual activity with a celebrity that they have never met).

Recently, X/Twitter users weaponized Grok, the platform’s AI tool, to create deepfakes of women. Many of the deepfakes were of women in bikinis—sometimes transparent bikinis. X/Twitter users also prompted Grok to cover the women’s skin in baby oil, blood, or bruises, as additional elements of humiliation.<sup>22</sup> As these examples demonstrate, the harms of deepfakes run deeper than just having a nude, realistic image created that may be mistaken as you. The harm is the loss of control over your own image, and having your image sexualized without your consent, where the intent of sexualization is to humiliate and silence you. The intent to silence is clear in the X/Twitter incidents: women who publicly denounced the deepfakes on the platform were targeted for even more deepfakes.<sup>23</sup>

In addition, the last part of the definition creates some uncertainty about who determines the image is likely to be mistaken for a visual recording, and how that threshold is met. This creates more barriers for survivors coming forward.<sup>24</sup>

**(e) Remove barriers to restorative justice by limiting the use of statements made during them**

**Recommendation:** proposed *Criminal Code* section 715.51 states that “No admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offence as a condition of the person being dealt with by an alternative measure is admissible in evidence against that person in any civil or criminal proceedings.” Broaden this section to apply to any statements made by persons alleged to have committed an offence, offenders, or victims.

**Rationale**

We note that this provision is similar to the container provision that was in section 717 of the *Criminal Code*, which applied to restorative justice processes that took place as part of the “Alternative Measures” to a criminal process.

---

<sup>22</sup> See Amelia Gentleman and Helena Horton, “[‘Add blood, forced smile’: how Grok’s nudification tool went viral](#)” (11 Jan 2026), *The Guardian*.

<sup>23</sup> See Laura Cress, “[Woman felt ‘dehumanised’ after Musk’s Grok AI used to digitally remove her clothes](#)” (2 Jan 2026), *BBC*.

<sup>24</sup> We note that Australia amended its Criminal Code to include deepfakes in its non-consensual distribution of intimate images provision by simply noting that an intimate image could either be in an unaltered form, or created or altered in any way by using technology. See [Criminal Code Amendment \(Deepfake Sexual Material\) Act 2024](#) (Commonwealth), 2024/78, s 474.17A(2) (Austl).

In order to make restorative justice processes safe for victims to participate in, there must be a guarantee that any statements made by victims during the process cannot be used against them (in addition to persons alleged to have committed an offence). As noted in a recent LEAF report on legal barriers that survivors face when trying to access restorative and transformative justice for sexual harm, “[j]ust as people who cause harm may be concerned about their admissions of responsibility being used against them, **the claims survivors make against the person who hurt them could be used as the basis for a defamation case against them.**”<sup>25</sup>

In the same report, we also noted that case law on the existing container provision in section 717 of the *Criminal Code* is limited; recent cases pointed out “how little guidance there is on how and when information from [alternative measures proceedings, including restorative justice processes] should be disclosed and for what purposes.”<sup>26</sup> We appreciate that Bill C-16 has provisions on how records used during the restorative justice processes may be disclosed and used.

**(f) Work with provinces and territories to lessen delays in the criminal legal system**

**Recommendation:** instead of requiring courts to consider remedies other than a stay of proceedings following a finding of unreasonable delay, work with the provinces and territories to properly resource the criminal legal system.

**Rationale:**

When criminal cases are not heard, the system fails everyone. Survivors who have invested their time, financial resources, and emotional energy into a system that often retraumatizes them end up left without a sense of justice. Those accused of crimes spend at least a year and a half (if not over thirty months for superior court matters) waiting for trial, often in deplorable pre-trial detention conditions or on remand with restrictive bail conditions, only to have the matter not proceed. The public sees the criminal legal system fail, undermining confidence in the administration of justice.

---

<sup>25</sup> Tamera Burnett and Mandi Gray, [Avenues to Justice: Restorative and Transformative Justice for Sexual Violence](#) (Toronto: LEAF, 2023) at 34 [emphasis added]. See also Mandi Gray, [Suing for Silence: Sexual Violence and Defamation Law](#) (Vancouver: UBC Press, 2024).

<sup>26</sup> Tamera Burnett and Mandi Gray, [Avenues to Justice: Restorative and Transformative Justice for Sexual Violence](#) (Toronto: LEAF, 2023) at 37.

The root cause of those harms is not, however, the *Jordan* framework or the decision to stay proceedings. It is the unreasonable delay underlying the stay. It is that delay that needs to be addressed.

Crucially, requiring a consideration of remedies other than stays of proceedings does not solve the problem of delay. On the contrary, it may remove an important incentive to move a proceeding along quickly, leading to further delays. This risks making survivors wait even longer for proceedings to resolve, and accused persons spend even more time in pre-trial detention or on remand.

Instead, reducing delays requires resources, including sufficient judicial appointments and staffing. This requires federal, provincial, and territorial governments to work together to adequately resource the criminal legal system.

## **Conclusion**

Bill C-16 provides opportunities to improve criminal legal responses for survivors of gender-based violence, but neither it nor criminal law as a whole will be enough to end the ongoing epidemic. In addition to specific changes to the *Criminal Code*, we urge a general approach to systemic criminal law reform that prioritizes the opportunity for survivors of gender-based violence to have access to independent legal advice, and ideally, independent legal representation throughout the criminal law process. It is also critical that legislative, policy, and funding responses look beyond criminal law to prevent and meaningfully respond to gender-based violence in Canada.

---

### **About the Barbra Schlifer Commemorative Clinic**

The Barbra Schlifer Commemorative Clinic (the “Clinic”) is a not-for-profit organization founded in 1985. The Clinic offers trauma-informed legal services and representation, counselling and interpretation services to diverse women and gender-diverse people that have experienced violence. The Clinic has supported over 150,000 clients through direct client services, legal reform, advocacy efforts, submissions, projects and programs.

### **About the Women’s Legal Education and Action Fund (LEAF)**

The Women’s Legal Education and Action Fund (LEAF) is a national not-for-profit and charity that works to advance the equality rights of women, girls, trans, and non-binary people in Canada through litigation, law reform, and public legal education. Since 1985, LEAF has been involved in over 145 cases that have helped shape the Canadian *Charter of Rights and Freedoms*.