



February 14, 2025

The Office of the Federal Ombudsperson for Victims of Crime

Thank you for giving the Canadian Centre for Child Protection (“C3P”) the opportunity to participate in the **Systemic Investigation on Sexual Assault and Criminal Justice In Canada**, carried out by your office.

C3P is a registered Canadian charity with a mandate of preventing the sexual exploitation and abuse of children. It owns and operates **Cybertip.ca**, Canada’s national tipline to report the online sexual exploitation of children, and **Project Arachnid**, an innovative technological tool designed to help break the cycle of abuse for survivors by combatting the growing proliferation of child sexual abuse material (“CSAM”)¹ online. Our Support Services department directly supports victims of online child sexual exploitation and abuse with accessing resources, navigating government/legal systems, and safety planning information. Throughout this document, we will use the term “online CSE” to describe online child sexual exploitation and abuse, which includes CSAM, online grooming, sextortion of children, and related criminal offences.

Note: C3P representatives participated in two calls with the Office of the Federal Ombudsperson for Victims of Crime in the summer of 2024. This document makes reference to those calls.

Online CSE: nature, prevalence, and overview of victim experience

- Police-reported online CSE has been steadily increasing since 2014 when Statistics Canada first began reporting cybercrime data² – the number of victims of these crimes will only grow.
- Online CSE is a form of sexual violence; while many impacts are similar to offline sexual violence, some impacts arise more frequently in an online context – for example, a victim may be manipulated or coerced into participating in their own abuse, or into supplying sexual imagery which may later be used to extort or threaten them.³
- Online CSE has potentially devastating impacts on its victims. Tragically, Canadian children have died by suicide after being exploited online, including Amanda Todd of Coquitlam, B.C. – victimized over 10 years ago – and Daniel Lints of Pilot Mound, Manitoba – victimized in February of 2022. Daniel died only 3 hours after an online extortionist coerced him into sending a sexual image and then threatened to share that image with others. These are examples of escalating tactics used against Canadian children.
- Statistics Canada has stated, “The nature of cybercrime is such that victims and accused can be located anywhere. Victims can be targeted in Canada though the perpetrator may be located outside of Canada and, conversely, Canadian offenders might target victims abroad”.⁴
- CSAM can be a permanent record of a crime – the systems victims of CSAM encounter, be they justice, compensation, or support-related, and the supports available to them, are not suited to the ongoing impacts associated with this victimization.

¹ Encompasses what is currently referred to in section 163.1 of the *Criminal Code* as “child pornography”, which term will change as of October 2025 to “child sexual abuse and exploitation material”.

² Statistics Canada, “Online child sexual exploitation: A statistical profile of police-reported incidents in Canada, 2014-2022” (12 March 2024), available online: <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2024001/article/00003-eng.htm>>.

³ See, for example, *R v Friesen*, 2020 SCC 9 at paras 47-49, and *R v Bertrand-Marchand*, 2023 SCC 26 at para 37-39.

⁴ Statistics Canada, “Online child sexual exploitation and abuse in Canada: A statistical profile of police-reported incidents and court charges, 2014 to 2020” (12 May 2022) at 22, available online: <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2022001/article/00008-eng.pdf?st=6-LldPlg>>.



- Online CSE victims need better support across systems, understanding of their unique needs, more information, and ways to have their rights respected under the *Canadian Victims Bill of Rights*, the *Charter*, and international law.
- Notably, many of the Canadian victims of online CSE with whom we work are not dealt with as part of the formal criminal court system, and so never receive needed supports.⁵
- Non-offending parents/caregivers and siblings are indirect victims of online CSE and experience emotional harms of their own. Parents/caregivers also experience financial harms.⁶
- Many of the systems and services accessed by victims of online CSE are the responsibility of provincial/territorial governments, which has resulted in serious inequities and substantial gaps across the country. The support a victim receives should not depend on where they live.

The experiences of victims of online CSE – areas for action

Overall, our message is that the systems victims of online CSE interact with must adapt to the realities of these crimes, recognizing the ubiquity of **anonymous** perpetrators and the extent and depravity of the ongoing victimization some victims endure. As one example, victim compensation forms ask for a police report number, but no such number exists if police do not take the victim's report of the crime. This happens when police do not believe they can unmask the perpetrator or they believe the perpetrator is in another country. **In our view, a report to Cybertip.ca should be considered a valid indicator of a report of the crime.**⁷ More information about the experiences of victims of online CSE is outlined below.

Remedies, supports, and access to justice

Access to counselling and other supports tailored to the sequelae of online CSE

More funding for support services is needed – we often hear of wait times and difficulties finding counsellors and services to address complex trauma caused by online CSE. In calls with the Office of the Federal Ombudsperson for Victims of Crime, C3P highlighted the need for enhanced counselling and supports for victims. An example was provided of one case C3P was aware of which involved two children who were horrifically abused emotionally, physically and sexually by a parent, whose sexual abuse was also recorded, and who had not been referred for counselling until after the prosecutor made inquiries to obtain victim impact information.

Unlike what happened in the foregoing case, supports should be proactively offered to victims of online CSE, and those supports should be responsive to the sequelae of online CSE. This will not only help provide equal access, it is also a trauma-informed approach. A trauma-informed approach equips victims with information and support throughout the process so they can make decisions about their needs. The burden of requesting supports and information should not be placed on victims, especially children.

⁵ This may be because police believe they cannot locate the online offender and do not take the report; the victim chooses not to report and/or access the court system; the exploitation/abuse did not reach a criminal threshold; the victim has not disclosed the exploitation/abuse to anyone; or the victim does not realize what happened to them is a crime or even that they are a victim (for example, a victim whose images are shared or recorded without their knowledge and they only learn of it much later).

⁶ An example of the impact on a caregiver and whole family is seen in *R v GM*, 2014 MBPC 57, which describes how the mother “struggle[d] to provide” after losing her job in the wake of her partner's abuse of their daughters.⁶ See also, Canadian Centre for Child Protection, “Production of child sexual abuse material in Canada: A study of legal decisions from 2001 to 2019: Full Report” (2024) at pages 63-66, available online: <<https://protectchildren.ca/en/resources-research/csam-legal-decisions-study/>>.

⁷ British Columbia's form is an example of a one that permits victims to say they reported not to police, but to a doctor, social worker or counsellor.



Moreover, many aspects of the justice, compensation and support systems are confusing and not transparent. For example, forms to access compensation are complex, bureaucratic, and fail to account for expenses associated with online CSE crimes (such as long-term counselling needs arising from ongoing circulation of images of the victim on the internet), placing an onus on traumatized victims to self-advocate.

Victims' family members' access to compensation

Access to compensation must reflect the critical role of, and broader impact of child victimization on, victim's family and their need for family supports. When parents/caregivers do not have the right to access supports, their ability to actively support their child's recovery is diminished which can have far-reaching consequences not just for the child, but also for the caregiver and society at large. There are glaring differences in the amount of compensation available and in who qualifies across the country.⁸ For example, B.C. provides counselling for family members; other jurisdictions do not.⁹

During C3P's prior calls with your office, we shared examples from families we have worked with. One example was a Manitoba mother who was denied compensation because she was not considered a "victim". Yet, the perpetrator was her intimate partner and his victim was her child. Failing to recognize that she was a victim meant she had no coverage for things like missed work tied not just to taking her child to and from counselling appointments, but also the appointments she needed for herself. This can be contrasted with a mother from B.C. who was provided with compensation and was able to access counselling for herself and her children, and some of the financial burdens she bore were also compensable.

When victims are not supported, they may be revictimized or become involved in the criminal court system

During one of C3P's calls with your office, we highlighted the failure of systems to support victims can contribute to those same victims being more vulnerable to being targeted in the future by (a) different perpetrator(s), or being charged with criminal offences that may be related to coping mechanisms, such as drug possession. In terms of future victimization, we are aware that some victims are targeted precisely because their prior victimization is known within online offending communities. It is not just C3P saying this; Statistics Canada has stated that "cybervictimization is associated with other forms of victimization in young people".¹⁰

We are also aware of victims who have become involved in the criminal court system in different ways. It seems that victims who are at risk for this outcome are those who were not given adequate support in the aftermath of their victimization or at other critical points of their recovery.

No notice to victims of CSAM when their imagery is possessed by subsequent offenders

Related to the issues with restitution below, Canada completely lacks a formal system to notify victims of CSAM when their images form part of a prosecution. This means victims of CSAM are not given the opportunity to know they are a victim and to be able to seek recovery from subsequent possessors. It also deprives the courts from understanding the long-term cost to victims - and society - from the circulation of this material.¹¹

⁸ For example, provincial/territorial caps on victim compensation vary by province (e.g., a victim in Saskatchewan can receive up to \$5,000 for counselling, while the limit in New Brunswick is \$2,000).

⁹ *Crime Victim Assistance Act*, SBC 2001, s 3(b).

¹⁰ Darcy Hango, *Online harms faced by youth and young adults: the prevalence and nature of cyber victimization* (Catalogue no. 75-006-X) (Statistics Canada, 21 February 2023) at page 12.

¹¹ Consider *R v Suomo*, 2018 MBPC 3. The court awarded \$5,000 to a victim whose child sexual abuse material the offender possessed, and whose victim impact statement was tendered in the proceeding. In *Suomu*, the court was provided with information about that specific victim's economic losses; information that is typically not available in Canadian sentencing proceedings.



The U.S. has a formalized system whereby a victim is notified in writing when imagery of the child sexual abuse is found within the collection of an individual who has been charged with a child pornography offence (if the victim has opted to receive such notices). This provides a more controlled means of obtaining information about whether a survivor's imagery is circulating online. Survivors who know that abusive imagery was created, but are uncertain whether it was distributed may learn it is online in an unexpected way, such as through a friend or a general search online; such a system will help reduce the likelihood of this occurring. Notification also facilitates safety planning, a critical component of recovery for victims of CSAM described more below.

Related to the notification for victims of CSAM, as a means of ensuring that their right to participate in matters that affect them is respected, police should, as part of the image categorization process, be utilizing available tools to reliably identify images and videos of known CSAM victims who have made available victim impact statements for submission to Canadian courts. This will enhance the rights of these victims to participate in proceedings that concern them.

Restitution is underutilized

Restitution is an underutilized remedy for victims of online CSE, despite the right to have such an order considered under the *Canadian Victims Bill of Rights* and the *Criminal Code*.¹² In the cases we see through our case law monitoring, restitution is barely ever mentioned, much less actually ordered. We are aware of only a few cases where restitution was ordered in favour of an identified CSAM victim (in a case against a subsequent possessor),¹³ and for cases that relate to the creation of the CSAM, we are aware of only one reported case where restitution was considered, and in that case denied.¹⁴ This is concerning given that online CSE can have financial impacts related to counselling, missed work or school, dental work (e.g., if grinding or clenching the teeth as developed as a stress response), medication, or replacement of household items.¹⁵

The CSAM production where restitution was not ordered is *R v JA*, 2019 MBQB 112 (CanLII). There is a review of case law and the actual ruling on restitution is in paras 53-55. See also *R v Suomu*, 2018 MBPC 3 (CanLII) – in this case restitution was ordered in relation to a victim of CSAM whose images were possessed by the offender.

The US has a more systematic approach through the *Amy, Vicky and Andy Child Pornography Victim Assistance Act of 2018 (AVAA)*. The victim's burden of proof for quantifying restitution under that *Act* is simply to establish costs that "were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim". If an offender is convicted, the court must order mandatory restitution that reflects their role in the causal process that underlies the victim's losses, but which is no less than \$3,000. This approach greatly simplifies the process and reduces the victim's burden. Under such a

¹² Section 737.1 of the *Criminal Code* requires a court, after a conviction or discharge, to consider making a restitution order under section 738 or 739.

¹³ A notable example is *R v Suomu*, 2018 MBPC 3 (CanLII). Materials were filed on behalf of a U.S. victim of CSAM (now an adult) who has filed multiple restitution claims against offenders in the U.S.

¹⁴ *R v JA*, 2019 MBQB 112. This case indicates that restitution was ordered in *R v P (BE)*, 2014 MBQB 79, however the reported decision in *R v P (BE)*, 2014 MBQB 79, which relates to the offender's dangerous offender designation, does not refer to any such order.

¹⁵ Consider *R v MS*, 2017 ONCJ 479. The offender sexually abused his 4-year-old daughter; he took pictures of the assaults and distributed some online. The victim's grandmother became the victim's guardian after the abuse; in her victim statement impact, she relayed that she has been unable to work; and she is required to pay for medications and new clothes and underwear as the victim has frequent accidents. There is no mention of the CVBR or the right to have restitution considered in the sentencing decision.



system, in cases where there are no identified CSAM victims, restitution should still be requested with funds going to services that generally support CSAM victims, such as counselling.¹⁶

In addition, restitution should not have to be collected by the victim. Child victims, in particular, should be able to receive an advance of any ordered restitution from the government with the government then pursuing the outstanding amount. Legislative changes could also enhance the priority of restitution debt over other debts, consideration could be given to tying restitution orders to a federal income tax set-off in order to facilitate collection, and/or a restitution enforcement program (similar to provincial maintenance enforcement programs) could be considered.

Imagery of victims in the court system

When the evidence in a criminal case includes CSAM, often involving identifiable victims, victims want a specific process for how this takes place that includes safeguards for securing electronic information in order to protect their privacy and security rights.¹⁷ The survivors depicted in CSAM count on those in the court system to ensure that any handling of their imagery does not present an undue risk of harm. This is an access to justice issue, as victims may not have a voice in how their imagery is disclosed or used as evidence, and the knowledge that their imagery may be used during the case can, in some instances, take an additional mental toll on victims of these crimes.

Despite the unique and illegal nature of this evidence, the *Criminal Code* does not contain processes for navigating issues such as disclosure to defence counsel. Without legislative guidance, inconsistencies have developed across Canada and decisions have been made without consulting survivors of CSAM, or adequately considering the risks of mishandling such sensitive material. On the issue of CSAM disclosure see:

R c Abel: The accused wished to receive unrestricted access to the CSAM he allegedly possessed. The Crown's position was the material should be viewed at the police station. C3P intervened in the proceeding to highlight the risks victims face in relation to their CSAM and to underscore that CSAM victims are relying on courts to protect their interests. The lower court agreed with the Crown's position that unrestricted access was not reasonable. The defence appealed. The Quebec Court of Appeal dismissed the appeal, noting the potential harm to victims and "real danger" of CSAM being accidentally released (para 50). The relevant cases are:

1. [2019 QCCS 5834](#) (granting C3P intervener status)
2. [2019 QCCS 5832](#) (dismissing accused's application for disclosure)
3. [2023 QCCA 824](#) (dismissing the appeal of the accused on the CSAM disclosure issue, and issuing a set of considerations for CSAM disclosure situations to assist in the future)

***R v Pohl*, 2021 MBQB 74 (CanLII)**, <<https://canlii.ca/t/jfcdv>>: In this case, the defence wanted an expert in another province (Ontario) to have access to the mirrored copy of the accused's hard drive. The defence was willing to agree to some conditions and C3P was granted leave to intervene on conditions necessary to

¹⁶ Taking such an approach in Canada would be consistent with Canada's obligation under Article 39 of the *Convention on the Rights of the Child* to "take all appropriate measures to promote physical and psychological recovery and social reintegration" of a child victim.

¹⁷ Consider *R v Pohl*, 2021 MBQB 74, in which the court set out very specific conditions for the provision of a mirrored image of a hard drive to the defence expert, and *R c Abel*, 2019 QCCS 5832, in which the court dismissed the defence application for disclosure of an identical copy of the items seized at his home, including CSAM contained thereon, and declared the Crown's mode of access (at the police station) reasonable (C3P intervened in *Pohl* and *Abel*).



protect the rights of victims of CSAM if the hard drive was to be ordered to be disclosed. The court ordered disclosure of the hard drive to the expert on several strict conditions set out at para 25.

We are also aware that there are instances where victims or their family members are shown imagery during the trial or investigation. Being forced to view one's own imagery (or the imagery of one's child) can cause immense harm. The following case is particularly disturbing in terms of what the victim had to endure on the stand: *R v SBS*, 2013 ABQB 322 (CanLII), <<https://canlii.ca/t/fz32p>>. There is a growing awareness and sensitivity of the significant toll this can take on a victim. Our organization has fielded questions from both police and experienced Crown attorneys wanting to do what they can to minimize the harm in situations where there is no alternative and this type of testimony or evidence is required to prove an essential element of the offence. Existing processes, within the *Criminal Code* and that have developed over time for criminal matters generally, were not designed to consider such issues from a trauma-informed lens, nor are they much help in figuring out how to balance principles such as open court with the victim's safety and psychological wellbeing.

Issues with participation and provision of timely information, need for enforcement tools

Online CSE victims, particularly parents when their children are victims, do not feel adequately updated or informed. Information relating to victim compensation funds and restitution is sorely lacking. The lack of support around/information about writing a victim impact statement is another example. Many victims, especially young children and children in care, need help conveying their experience. While there are information sheets on writing victim impact statements, they require the victim to read and absorb the contents on their own, and often do not address the needs of children or victims of online CSE, who may know how their safety, security and wellbeing may be impacted in the future.

Moreover, victims are not always provided with information about the court proceedings, or in some cases, the information is not accurate. Victims have told us they feel unprepared for hearings, do not know what to expect or if the hearing is important, and often waste their time showing up for hearings that have been rescheduled or are of little consequence. Communities that have been marginalized may have an even tougher time accessing services and information.

Overall victims need more tools to enforce their rights. Often, actors within the court system think it is someone else's job to help the victim, so no one does. Even if it is not their responsibility, they must be required to help the victim find the right provider. In addition, victims' rights, such as those outlined in the *Canadian Victims Bill of Rights*, are often framed as a right to have the victim's needs *considered*, as opposed to an enforceable standard. Victims need concrete and defined rights, along with mechanisms to meaningfully enforce those rights and seek consequences for their violation.

Need for an advocate and tailored information for children

The issues facing child victims are different from those facing adult victims and child victims may benefit from an advocate in certain cases. Some areas urgently in need of clarification/adjustment for children (there are many) are:

- Ensuring the right to information is fulfilled in a trauma sensitive and developmentally appropriate way and that it is crystal clear **who** is responsible for providing **what** information **to whom** and **when**.
- Children must have access to an advocate who can explain their rights, help them identify and access available resources and supports, ensure appropriate safety plans are in place, and advocate for their interests as a victim at various stages.



Measures such as these will help fulfill Canada's obligation under **Article 12 of the *United Nations Convention on the Rights of the Child***, which states "the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

Safety and security of victims

Ongoing, specific safety planning for victims of online CSE is critically necessary, is very different from safety planning for other crimes, and may need to change as the child ages and/or their abuse images circulate. For example, if the victim's real name has become associated with their CSAM, they may need to change their name to protect themselves from the organized, determined and predatory online community of offenders. Yet the name change process (provincially regulated) is not designed to assist this type of victim. For example, in most provinces, name changes are published in a provincial Gazette, so victims of online crimes seeking to escape the association with their legal name are denied the opportunity to do that in a protected way unless the province bends the rules for them, which means disclosing the reasons why to government officials, thus creating other records tied to their legal name. As stated above, victims of online CSE face serious risks of revictimization. The nature and extent of these risks is not well understood by the systems that need to understand in order to adapt to the new reality victims are being forced to face.

Safety and security of victims (victim information in legal decisions and online)

Victims also experience safety risks arising from personal information in legal decisions. C3P's law department has contacted publishers of legal decisions to ask for information about a victim to be redacted many times. Sometimes the information was clearly included by mistake. In other cases, especially for victims of online crime, there is a lack of understanding of the type of information that can be used to identify victims online. Specifically for CSAM victims, some "series names" (i.e., the name used by law enforcement to refer to imagery of a certain victim or victims) can identify the victim, especially when combined with other information in the reported decision. Offender usernames can also identify victims.

Many justice officials are not informed about the safety issues facing victims of online CSE. For example, victims of CSAM typically use pseudonyms in legal proceedings to protect their identity as some have been identified by individuals who have seen their CSAM online.¹⁸ Through operating Cybertip.ca, we know that some offenders are interested in information about CSAM victims. These risks – and the practice of using pseudonyms – are not well understood by Canadian judges, impairing the protection CSAM victims receive.¹⁹

Related issue – Publication bans

Amendments to the publication bans provisions in the *Code* have helped provide victims with a process to lift or vary the ban on their name. However, issues remain, including those that relate to the victim's safety. Some offenders are being protected by bans that are too broad (e.g., protecting mom's boyfriend's name not just in the proceedings but in perpetuity). On the other hand, some victims have been harmed when

¹⁸ Canadian Centre for Child Protection, *International Survivors' Survey: Executive Summary*, page 29, graph 44, available online: <<https://protectchildren.ca/en/resources-research/survivors-survey-results/>>.

¹⁹ For example, in a CSAM sentencing for which C3P coordinated the availability of victim impact statements, the court's written reasons connected the victim pseudonyms to the names of their CSAM series and provided detailed information about imagery of the victims, which risked making this information available to those in the offending community. Once informed of the safety risks by C3P, the Crown requested redaction of the series names. Consider also, C3P requests that all video victim impact statements from victims of CSAM be sealed in order to protect their safety. While this is generally not an issue, consider *R v Subia*, 2022 ONSC 1693 at para 34 where the court refused to seal the video victim impact statements provided.



offender's name and/or details of offences are too public. For example, we are aware of a case where police had an offender in custody and believed there were more victims. A public call, with the *offender's name* and his *relationship* to the victims police already knew about, was put out to encourage more victims to come forward. The names of the victims police knew about were not included in the public release, but members of the small community had no trouble connecting the dots and figuring out who the victims were. In that instance, though there was publication ban in place to protect the victims, it did not protect them at all because the name of the offender remained in the public domain

Safety and security of victims – proactively reduce/prevent the public availability and circulation of imagery

There is currently no legal requirement for law enforcement across Canada to add hash values (digital fingerprints) related to imagery of newly identified victims of CSAM into the national RCMP database. There is also no legal requirement for Canadian police to share hash values of newly identified CSAM for use within Project Arachnid, which is a technology platform operated by C3P that is focused on tackling the removal of known CSAM and preventing its reupload. Through Project Arachnid, C3P is aware of how quickly and extensively imagery can spread online. From a victim lens, tackling removal and preventing reupload are critical tasks that must be prioritized to help reduce the future victimization and personal safety risks that can result when CSAM is allowed to proliferate unabated.

It is not only the illegal material of victims that poses safety risks. For some victims, non-illegal imagery of them is shared by offenders, including images of them as they get older to show what they like now. Therefore, safety planning and image removal efforts must encompass all imagery of the victim and not be limited to illegal content.

Safety and security of victims (during parole and after release)

During C3P's calls with your Office, we shared concerns about offenders being released on parole or moved to an institution within the same community where their victim(s) live and being out in the community on escorted and unescorted release. While we recognize offenders eventually are released into the community, from a victim safety perspective, more care and attention must be given to their safety and security concerns.

Other issues facing victims of online CSE

Lack of strategic response to youth being charged with CSAM and online offences

C3P has observed more young persons ("acting out youth") charged with CSAM and related crimes such as luring, extortion and NCDII. Some of these instances should be dealt with another way (intervention through schools, diversion, or restorative justice), and some signal serious issues that need to be taken more seriously with more tailored supports and treatment. This is a victims' right issue as it relates to the victim's safety from the acting out youth (in some cases, the acting out youth and victim attend the same school) and possible reparations by the acting out youth to the victim.

In some instances, these acts occur after the acting out youth is victimized by an online predator, or has been exposed to CSAM or other concerning content by someone else online. C3P has also observed that more adult offenders are claiming their CSAM involvement began when they were under 18. All of this signals a need for more interventions to be available at an earlier age when concerning online behaviours are first identified and there is an opportunity to prevent escalation into future criminal activity.



Those who work with youth may not know how or where to get help for the youth, nor what interventions are most appropriate. Services and programming can be limited, especially in rural areas. When the youth is charged and pleads guilty or is convicted, meaningful consequences and a holistic approach in keeping with the *Youth Criminal Justice Act* must be employed. Overall, more must be done to develop appropriate interventions for youth including:

- Continued research into youth convicted of online sexual crimes, and related topics such exposure to harmful content online, to identify the common root causes.
- Development of targeted supports and treatment that considers the youth's stage of development.
- Development of risk assessment tools specific to youth convicted of online sexual crimes, which will assist in identifying necessary public protections and the type of intervention suitable to address risk factors - hopefully minimizing future crimes.
- Education about online sexual crimes for those who intersect with youth (e.g., teachers, school administrators, police, Crowns, and judges).

Constitutional division of powers must be properly navigated if victims are to receive needed supports

The federal government must raise the bar for victim rights across the country. While victim services programs exist, they are limited in scope, inconsistent across provinces, and are inadequate. For example:

- Some jurisdictions have detailed victim rights bills but not all. For example, Manitoba's legislation sets out the exact pieces of information law enforcement, prosecutors, court administrators, correctional services, and other actors must provide; when and how a victim can have a say on certain decisions; and whether these rights are automatic or fulfilled on request.²⁰
- Some jurisdictions make it easier for victims to apply for and receive restitution, while others do not. As an example, Saskatchewan includes a "Statement on Restitution" form within the victim impact statement form, and its Restitution Civil Enforcement Program allows victims to register their restitution orders so that government collection officers will enforce them.²¹

Also, there is a right to certain forms of protection in the CVBR, but no right to support through victims services or to safety planning, which tends to be offered provincially.²²

Recommendations

1. **Modernize compensation and support systems.** Recognize the realities of online crimes and the long term impacts they have, and ensure victims get the support and counselling services they need early and on an ongoing basis to promote psychological healing and reduce future victimization. Ensure non-offending parents of child victims have status as a "victim" for the purpose of access to supports and compensation. Enshrine the right of a child to have an advocate to ensure they receive the supports to which they are entitled, especially if their family is not able or is not a safe support (e.g., if the offender is a family member).
2. **Reduce jurisdictional inequities.** Legislation and programs vary considerably across the country.

²⁰ *The Victims' Bill of Rights*, CCSM c V55.

²¹ See <https://www.saskatchewan.ca/residents/justice-crime-and-the-law/victims-of-crime-and-abuse/victim-impact-statement-and-restitution>.

²² Consider Manitoba's Bill 43, *The Disclosure to Protect Against Intimate Partner Violence Act* (introduced May 30, 2022) – as worded, this bill would require, as appropriate, a government agency to create a safety plan and provide information about resources to persons who make a request under the act to receive information about a possible risk of intimate partner violence.



3. **CSAM victim notification system.** Victims of CSAM are currently being denied the ability to participate fully in matters that impact them. In part this is related to the lack of a formalized system to ensure they have notice of cases that involve their imagery.
4. **Restitution.** Victims of online crimes seldom apply for or receive restitution awards. An examination of the restitution system itself is long overdue.
5. **A CSAM handling protocol is needed.** CSAM evidence is not the same as other types of evidence. Its misuse or mishandling can have real consequences for victims.
6. **Greater understanding needed on the safety and security issues pertaining to victims of online crimes.** Those within the criminal court and other systems do not necessarily understand the various risks that exist for victims of online crimes. Increased educational efforts would assist in ensuring existing systems and processes are adapted to fairly account for the safety and security interests of these victims.
7. **CSAM removal efforts.** CSAM removal benefits CSAM victims by reducing their exposure and the risk of future harm, thus protecting their rights to privacy, dignity and safety.
8. **Addressing youth crime.** There is a concerning rise in charges against young people for online crimes. The reasons for this are varied and a multi-system approach is needed.

There is so much that can be done to improve things for victims of online crimes. The above is a starting point for action. Thank you for conducting this study and for your consideration of this submission. Below is a list of supplementary material that will be uploaded along with this submission, along with an explanation of why we have chosen to include it.

Supplementary material – C3P reports

The following are research reports published by C3P. All published C3P research is available at:
<https://protectchildren.ca/en/resources-research/#research>.

- [“Experiences of child sexual abuse material survivors: How technology companies' inaction leads to fear, stalking, and harassment”](#) (2024): This report is based on responses from 281 survivors, and focuses on survivors' experiences with the distribution of recordings of their abuse and policy solutions to mitigate its harms. It is relevant to the need for specialized supports, proactive ways to address the spread/take down of imagery online, and the safety and security concerns victims face. It illustrates the unique nature of this victimization, which is the reason we are calling for tailored supports, information, and access to justice. The existing models often do not work for these victims.
- [“Production of child sexual abuse material in Canada: A study of legal decisions from 2001 to 2019”](#) (2024): This report is an analysis of Canadian legal decisions issued between Jan. 1, 2001, and July 31, 2019, involving the production of CSAM. It backstops our submission that restitution is incredibly rare in these cases (see page 59 of the Full Report) and contains an overview of the impacts and experiences of the victims in the project, as expressed in case law – with specific information on parent impacts, sibling impacts, and counselling (pages 55-67).
- [“Parents' Perspectives on how Child Sexual Abuse Material Impacts the Entire Family”](#) (2023): This is a survey of parents from around the globe whose children's sexual abuse was recorded. It contains insight into how the abuse affected their health and well-being, relevant to our submission that victim compensation schemes must be accessible to parents and family members.

ONWA's Feedback – the OFOVC's Systemic Investigation for Sexual Assault within the Canadian Criminal Justice System

DECEMBER 2024



Ontario Native Women's Association



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About ONWA

The Ontario Native Women's Association (ONWA) celebrates and honours the safety and healing of Indigenous women and girls as they take up their leadership roles in the family, community and internationally for generations to come. ONWA is the oldest and largest Indigenous women's organization in Canada, established as a not-for-profit organization in 1971 to empower and support all Indigenous women and their families in the province of Ontario, regardless of their status or locality, through research, advocacy, policy development and culturally grounded programs. ONWA has over 50 years of experience and expertise in amplifying Indigenous women's voices and advocating for solutions created and led by Indigenous women.

ONWA is unique as an organization, and our operating model reflects our wholistic approach to restoring Indigenous women's rights and leadership. In addition to being a research and policy advocacy organization, ONWA is an association with 16 Chapters (incorporated Indigenous women's organizations providing front-line services) and 23 Councils (grassroots Indigenous women's groups supporting community development models). Additionally, ONWA is a direct, front-line service provider delivering over 76 programs and projects across the lifecycle for Indigenous women and girls¹ along with their families in 26 sites in Ontario. ONWA's reach continues to expand as more Indigenous women's organizations join our collective. In 2023-2024, ONWA's provided over 186,000 direct services to Indigenous women and their families.

ONWA is mandated to end all forms of violence against Indigenous women, and the safety of Indigenous women is central to ONWA's research, advocacy, policy and program development. ONWA's work is guided and directed by nine strategic issues identified by Indigenous women as integral to their safety and wellbeing: Mother Earth, Family Violence, Sexual Violence, Child Welfare, Human Trafficking, MMIWG, Housing and Homelessness, Justice, and Health.

ONWA applies an Indigenous Gender-Based Analysis (IGBA) lens to our research, policy and program development that looks at the intersectionality of all issues which impact the safety of Indigenous women and girls. ONWA's IGBA was developed to address the harmful practices of applying non-Indigenous methodologies that do not account for gender to Indigenous women, their lives, and the issues impacting them.

¹ ONWA welcomes and has always been inclusive of all self-identifying Indigenous women and girls, including Two-Spirit people. This includes welcoming the many social identities that we each hold.

ONWA recognizes that all issues that Indigenous women strive to overcome are interconnected and must be responded to in relation to one another. We know that restoring and reclaiming Indigenous women's leadership, voices, identity, and safety is the foundation for systemic change. ONWA advocates locally, provincially, nationally and internationally, for policy changes that increase the safety of Indigenous women and girls across all systems they interact with daily. ONWA focuses on healing at an individual, family, community, and nation level as we know that this is how we will restore balance.

Introduction

Canada's criminal justice system (policing and legal system) is a colonial institution, embedded with racism and sexism that too often re-traumatizes and re-victimizes Survivors. Within this system, Indigenous women frequently experience biases, stereotypes and the dismissal and devaluation of our safety and our lives. Indigenous women face the highest risk of experiencing violent victimization in their lifetime. Specifically, 63% of Indigenous women have experienced physical or sexual violence in their lifetime.² ONWA shares the perspectives of Indigenous women who are Survivors of sexual violence, violence, victimization, and human trafficking with the Office of the Federal Ombudsman for Victims of Crime (OFOVC) to highlight critical shortcomings and the need for reforms to the Canadian criminal justice system.

ONWA's Recommendations

1. ONWA reiterates the Calls for Justice from the National Inquiry into MMIWG relevant to sexual assault Survivors' experiences with the justice system (see appendix). ONWA calls for the government of Canada to implement and action its commitments under the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and urgently address Indigenous women's experiences of gender-based violence.
2. ONWA advocates for a National Strategy on Sexual Violence against Indigenous Women and girls, which focuses on the root causes of violence and healing from colonization. This National Strategy must be co-developed with Indigenous Survivors and Indigenous women's organizations.

² "The Overrepresentation of Indigenous People in the Criminal Justice System." November 2024. JustFacts Research and Statistics Division.

3. ONWA calls for training for all police services (i.e., Chief of Police and Police Service Board members), lawyers and Crowns about Indigenous women's experiences as Survivors of violence and how to use trauma-informed practices.
4. ONWA advocates for trauma-informed practices across the entire justice sector:
 - Indigenous Survivors, across all jurisdictions, require access to another Indigenous woman support person (and culture-based supports, medicines) when disclosing violence and navigating criminal justice proceedings.
 - Court processes must be re-designed to centre the needs of Indigenous Survivors with trauma-informed practices: Testimony options must allow for virtual appearances and a Survivor should not be required to be in the same space as the perpetrator.
 - Indigenous Survivors require a comprehensive safety plan when they are being asked to testify. The safety plan must be designed in coordination with local Indigenous service providers.
 - Culture-based healing supports must be readily available and referrals to Indigenous women's organizations.
5. ONWA advocates for increased and equitable funding for emergency responses to support Survivors of violence: trauma-informed health and mental health services, as well as culture-based responses and aftercare supports.
 - Moreover, there is a need for sustainable investments for 24-hour Human Trafficking services in cities across the country.
6. Indigenous women's organizations require core funding to support Indigenous women navigating justice proceedings, in all jurisdictions, with culture-based supports and referrals to community-based programming.

ONWA acknowledges the bravery, wisdom, and leadership of all Survivors as they are the experts, and their advice informs all aspects of our sexual violence, and anti-human trafficking/sexual exploitation work to keep Indigenous women, girls, and their families safe. Indigenous women have specific and acute needs for victim services and ONWA offers the following feedback for the OFOVC's key questions.

Key Question 1:

Can you describe serious gaps and barriers to access to justice for Survivors of sexual assault/human trafficking, including intersectional barriers for those who are especially vulnerable or marginalized?

The Canadian justice system is inherently colonial and was developed as a tool of Canada's assimilationist agenda. Indigenous women's perspectives and notions of justice are often incongruent with the principles of justice laid out by the Department of Justice Canada. Therefore, Indigenous women often question if we can ever achieve justice from a system that was designed to harm and eliminate our families.

ONWA's *She is Wise: Sexual Violence Research Project 2019-2024*,³ has identified that Indigenous women are not speaking about their experiences of sexual violence. The key findings from this Project include:

- Indigenous women have no confidence they will be believed when reporting sexual violence to the police and in hospitals.
- Indigenous women do not connect safety with the police and policing systems.
- Indigenous women describe victim blaming, mistreatment, discrimination, judgement, lack of dignity and respect when disclosing violence to police.
- There are gaps in healing-focused supports and services for survivors and families who have been impacted by sexual violence.
- Healing is a continuum, and interventions need to be considered for different stages of the lifecycle. There is no one-size-fits all solution and approaches need to consider the intersectionality of an individual and the dynamics of their social location alongside the uniqueness of their community history and the impacts of colonialism.

Indigenous women face specific barriers that are layered and compounding – they face both racism and sexism in addition to discrimination. Survivors of sexual violence describe experiences of poverty, homelessness, mental health and addiction issues. The ability to lay charges, or to be able to testify against a perpetrator seems insurmountable when their basic safety and housing needs are not met. Moreover, the process of seeking “justice” is lengthy and there is an absolute lack of compassion throughout the entire process. The justice system is seen as protecting perpetrators of crime, rather than providing justice to Survivors.

³ ONWA's *She is Wise: Sexual Violence Research Project* identifies specific ways to support Indigenous women's access to culturally relevant, gender-based violence services, and to support communities to address sexual violence against Indigenous women.

Recent statistics demonstrate that sexual assault cases face significant barriers at every stage of the justice system. Only 6% of sexual assaults are reported to the police, and of those, only one-third (33%) result in charges being laid. Just 20% of reported cases proceed to court, and less than half (48%) of completed court cases result in a finding of guilt. Of the cases that do result in a conviction, only half (50%) lead to a sentence of custody. Altogether, only 5% of sexual assaults reported to the police result in a custodial sentence, highlighting systemic challenges in achieving justice for Survivors.⁴ Significant reforms are needed to address systemic barriers that impact Indigenous women's reporting experiences. Additionally, the low likelihood of meaningful legal consequences for offenders is a real deterrent for Indigenous women when seeking consequences through the justice system.

Key Question 2:

Can you describe some best practices for Survivors who are navigating the criminal justice system?

ONWA has expertise supporting Indigenous women who are Survivors of sexual violence, including human trafficking/sexual exploitation to navigate the criminal justice system and legal proceedings. ONWA's Courage for Change program is the largest Indigenous-led anti-human trafficking program in Canada. The program is delivered in 11 sites across the province and offers a variety of culturally grounded and trauma informed services to Indigenous women and youth who are at risk of, currently involved in, or are Survivors of human trafficking/sexual exploitation. This includes 24/7 crisis response, advocacy and service navigation, case management, harm reduction and safety planning, one-on-one support, referrals to healthcare, counseling, addiction services, and cultural interventions. Due to the lack of dedicated court-workers for Survivors of human trafficking, Courage for Change workers are frequently providing support for Survivors throughout their interactions with the courts. In 2023-24, the program supported 42 Indigenous women through criminal justice system related to domestic violence and sexual assault charges. Based on our work over the last 50 years, we have identified the following wise practices:

- Having a consistent and Indigenous woman worker whose only job is to walk with Survivors through the legal process and advocate on their behalf, providing extensive supports, such as service navigation, referrals, emotional support, accompaniment to meetings and court.

⁴ Cotter, A. (2024). Criminal justice outcomes of sexual assault in Canada, 2015 to 2019. *Juristat*. Statistics Canada Catalogue no. 85-002-X. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2024001/article/00007-eng.htm>

- Access to cultural healing practices, such as ceremonies, teachings, and land-based activities throughout their journey through the criminal justice system.
- Access to ongoing and long-term counselling and aftercare supports – prior to, during, and after their interactions with the system.
- Dedicated programs for Indigenous women who are Survivors, led by Indigenous women, such as ONWA's Courage for Change program and Indigenous Sexual Assault program:
 - ONWA's Indigenous Sexual Assault program works in collaboration with ONWA's Indigenous Victim Family Liaison⁵ to provide immediate services and supports to Indigenous women who are Survivors of assault. The program specializes in providing specific case management practices and wrap around supportive services through cultural intervention practices that support healing. In 2023-24, this program was over capacity and there was a 58% increase in requests to assist Indigenous women to navigate judicial systems post sexual assault.
- Robust safety planning by the Crown when Survivors are testifying in court.
 - ONWA has been involved in a case where a Survivor of human trafficking/sexual exploitation was to be accommodated, as set up by the Ministry of the Attorney General, in a hotel known to be involved in trafficking activity when they came to testify, and where the Survivor encountered their trafficker in their hotel.
- Education for the criminal justice system on the unique experiences of Indigenous women and the underlying factors that put them at heightened risk of sexual violence and human trafficking/sexual exploitation (e.g. colonization, racism, patriarchal norms and values).
 - For example, ONWA's Indigenous Anti-Human Trafficking Liaisons program provides training, awareness, and capacity building for Indigenous and non-Indigenous service providers and systems partners (including police) to enable them to better support Indigenous women who are Survivors of human trafficking/sexual exploitation.
- Relationship building between police services and Indigenous women's organizations, to build relationships with Survivors and provide trauma-informed services.
 - Survivors have told ONWA that they need our support to build trusting relationships with police, to help change police attitudes and behaviour towards them.
- For example, ONWA's Courage for Change program is re-launching its successful "Ride Along" project with Thunder Bay Police. This pilot project saw Courage for Change

⁵ ONWA's Indigenous Victim and Family Liaison provides support to families of Missing and Murdered Indigenous Women and those who are experiencing or have experienced violence.

workers accompanying police officers when they responded to sexual assault/human trafficking calls to role model trauma informed care and build trust between the police and Survivors. It was temporarily suspended due to COVID-19 but will begin again in the new year.

- Partnerships, relationships and linkages between all organizations that support Survivors, to strengthen referral pathways and ensure an integrated network of support and advocacy.
 - For example, ONWA has developed partnerships with Sexual Assault/Domestic Violence Care Centres based in hospitals, and linkages with Indigenous Peace Keeping Units and specialized Human Trafficking Units within police services.
- Partnerships between Indigenous women's organizations and jails/corrections facilities to provide on-site cultural healing programming and collaborate on safety planning and discharge planning for Indigenous women Survivors who are also criminalized, to ensure their safety and wellbeing when they leave these institutions.

Key Question 3:

Is the Canadian Victims Bill of Rights helpful for Survivors?

The *Canadian Victims Bill of Rights* (CVBR) has its limitations as a federal piece of legislation that does not extend protections to issues governed by provincial law. Additionally, there are notable limitations for Indigenous women who are Survivors of human trafficking, violence, and sexual assault – as the CVBR does not account for the underlying systemic issues of racism, sexism, and colonialism (dominant relations of power). ONWA has the following concerns with the CVBR:

- Victims have the right to have their security and privacy considered by criminal justice personnel, but not the right to have their security and privacy upheld in all legal proceedings– i.e., when a Survivor is required to testify in person in a city where their trauma occurred.
- There are no directives that require safety planning for a Survivor navigating the process. There is an overall lack of accountability from the justice system for Indigenous women.
- CVBR does not include the right to be treated with dignity, compassion and respect by criminal justice personnel.
- CVBR does not mandate the provision of trauma-informed or culturally competent services or behaviour by criminal justice personnel.

- The CVBR provides no appeal process on the grounds that a right as been infringed under the Act.

Systemic racism within the justice system, lengthy legal processes, and re-traumatization from disclosure and testimony frequently discourages Indigenous Survivors from reporting violence or participating in legal processes. There is a need for reforms to the CVBR to require responsive approaches from the justice system that attend to the unique lived experiences of Indigenous Survivors. Moreover, there is a need for more resources, in general, about navigating the justice system as a Survivor, statistics around the average length of criminal proceedings, provisions under the CVBR, etc.

Key Question 4:

What would the system look like for it to be better? What are some of your recommendations?

ONWA advocates for the OFOVC's systemic investigation on how Survivors of sexual assault are treated in the justice system to consider the need for legislative amendments, changes to the landscape of victim services, as well as systemic changes to enable Indigenous Survivor-centred approaches in the legal system.

Legislative Changes:

- Victim impact statements, as outlined under the *Criminal Code*, are foreclosing in how they must be framed (essay-based format). Indigenous Survivors should have more flexibility in how they decide to share their story (e.g. allowing for oral testimony or other methods.).
- Information on publication bans must be accessible for how to comply with them or how to lift them.
- For restitution orders, the onus should not fall to the Survivor to enforce (civil court proceedings) – as this may be costly and require hiring a lawyer.
- Amendments to the CVBR to allow for an appeal process on the grounds that a right has been infringed under the Act.

Redesigning court processes so that they are trauma-informed and prioritize Survivors' safety:

- Training and standards in trauma-informed care and cultural competency for criminal justice personnel, including court workers, lawyers and Crowns.
- Allowing Survivors to testify remotely online so they do not have to travel back to their place of trauma.

- Ensure that the option to testify without being in the same room as the perpetrator (i.e., CCTV) is made readily accessible and becomes a routine option for Survivors.
- Provide in-court supports and counselling services for those testifying.
- Advanced safety planning for Survivors who do testify in person, carried out in collaboration with Indigenous community organizations to ensure Survivor's safety.

Victim Services:

- There is an acute need for Indigenous women's organization to be funded to deliver Indigenous women's specific victim services and Survivor supports.
 - Specifically, Indigenous women have identified the need for another Indigenous woman to be present and to have access to trauma-informed supports and traditional medicines when disclosing sexual violence. ONWA's *She is Wise Sexual Violence Research Project 2019-2024*, found that arts-based therapy was a wise practice when discussing sexual violence.
 - Indigenous women's organizations need to be funded to deliver Indigenous Court Support workers, available in all jurisdictions. Indigenous women-led services are critical for Indigenous Survivors to guide/support them through the legal processes.
- Indigenous women require access to funding supports at all stages of their healing journey and there must be increased funding allocations for traditional Indigenous healing.
 - In Ontario, ONWA has concerns about the Victim Quick Response Program (VQRP+) that includes a deadline to apply for short term counselling or traditional Indigenous health services within six months of the date of the crime.⁶ Additionally, the deadline to apply for support is one year from the date of the crime.⁷ Indigenous women's healing journey may not be linear and follow a "standard" timeline. ONWA walks alongside Indigenous women on their healing journey, which is led and defined by the woman herself.

Systemic Changes:

- Implement Calls for Justice from the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) that are relevant to sexual assault Survivors' experiences with criminal justice system (see Appendix).

⁶ CLEO: Steps to Justice. March 2022. "Apply to the VQRP+." Retrieved from: <https://stepstojustice.ca/steps/criminal-law/3-apply-vqrp/>

⁷ Ibid.

- Canada's response to gender-based violence is inadequate. In particular, the national crisis of MMIWG violates Canada's commitments to CEDAW.
- CEDAW's concluding observations on the tenth periodic report of Canada flags concern with the slow progress on implementing the Calls for Justice and additionally calls for further measures and concrete actions (Recommendation 25 (a) and (b)) to address the root, systemic causes of all forms of violence Indigenous women's women and girls.⁸
- ONWA advocates for a National Strategy on Sexual Violence against Indigenous Women and girls, which focuses on the root causes of violence and healing from colonization. This Strategy should include:
 - National Standards for Indigenous Victim Services – developed by Indigenous women and their organizations.
 - Training for police (i.e., Chief of Police and Police Service Board members), lawyers and Crowns about Indigenous women's experiences as Survivors of violence and trauma-informed practices.
 - Additionally, senior level Directors for organizations administering victim services must be required to undertake Indigenous women's cultural competency training to be equipped to address policies and practices that are colonial and sexist – which cause harm to Indigenous Survivors.
 - Increased and equitable funding for emergency responses to support Survivors of violence: trauma-informed health and mental health services, as well as culture-based responses and aftercare supports.
 - Sustainable investments for 24-hour Human Trafficking services in cities across the country.
 - All First Nation nursing stations must be provided with equipment and training resources to safely perform sexual assault evidence kits in a respectful, trauma-informed, and culturally appropriate manner.
 - Consistent access to forensic kits across Canada.
- Indigenous culture-based healing programs and ending violence programs must be available in correctional facilities to ensure that the healing process is supported prior to

⁸ Committee on the Elimination of Discrimination against Women. (2024). *Concluding observation on the tenth periodic report of Canada*. CEDAW/C/CAN/10. Retrieved from: tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2F10&Lang=en

release. The OFOVS's mandate extends to the *Corrections and Conditional Release Act* – and parole.

- Indigenous women in corrections require increased access to culture-based healing programs to begin the healing journey prior to release.
- In 2020-21, the Auditor General of Canada found 91% of Indigenous women in federal prisons have histories of physical and or sexual abuse.⁹
- Additionally, offenders who have perpetrated violence against Indigenous women must be required to take Indigenous cultural competency training in corrections.

Conclusion:

There is an urgent need for Canada to implement the Calls for Justice from the National Inquiry into MMIWG and uphold its commitments under CEDAW. All levels of government have a responsibility to improve Indigenous women's safety and address Indigenous gender-based violence. As part of this work, critical changes to the landscape of victim services are necessary to address the needs of Indigenous Survivors navigating the criminal justice sector. ONWA is committed to amplifying the voices of Indigenous women and advocating for policies that promote our inherent right to safety and access to justice.

Appendix: Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls

Calls for Justice relevant to Criminal Justice System response to Sexual Assault Survivors

Calls for All Governments

5.2 We call upon the federal government to review and amend the Criminal Code to eliminate definitions of offences that minimize the culpability of the offender.

⁹ "Injustices and Miscarriage of Justice Experienced by 12 Indigenous Women", Department of Justice. May 2022. https://sencanada.ca/media/joph5la2/en_report_injustices-and-miscarriages-of-justice-experienced-by-12-indigenous-women_may-16-2022.pdf

5.3 We call upon the federal government to review and reform the law about sexualized violence and intimate partner violence, utilizing the perspectives of feminist and Indigenous women, girls, and 2SLGBTQQIA people

5.6 We call upon provincial and territorial governments to develop an enhanced, holistic, comprehensive approach for the provision of support to Indigenous victims of crime and families and friends of Indigenous murdered or missing persons. This includes but is not limited to the following measures:

- i. Guaranteed access to financial support and meaningful and appropriate trauma care must be provided for victims of crime and traumatic incidents, regardless of whether they report directly to the police, if the perpetrator is charged, or if there is a conviction.
- ii. Adequate and reliable culturally relevant and accessible victim services must be provided to family members and Survivors of crime, and funding must be provided to Indigenous and community-led organizations that deliver victim services and healing supports.
- iii. Legislated paid leave and disability benefits must be provided for victims of crime or traumatic events.
- iv. Guaranteed access to independent legal services must be provided throughout court processes. As soon as an Indigenous woman, girl, or 2SLGBTQQIA person decides to report an offence, before speaking to the police, they must have guaranteed access to legal counsel at no cost.
- v. Victim services must be independent from prosecution services and police services.

5.7 We call upon federal and provincial governments to establish robust and well-funded Indigenous civilian police oversight bodies (or branches within established reputable civilian oversight bodies within a jurisdiction) in all jurisdictions, which must include representation of Indigenous women, girls, and 2SLGBTQQIA people, inclusive of diverse Indigenous cultural backgrounds, with the power to:

- i. Observe and oversee investigations in relation to police negligence or misconduct, including but not limited to rape and other sexual offences.
- ii. Observe and oversee investigations of cases involving Indigenous Peoples.
- iii. Publicly report on police progress in addressing findings and recommendations at least annually.

5.9 We call upon all governments to ensure that protection orders are available, accessible, promptly issued, and effectively serviced and resourced to protect the safety of Indigenous women, girls, and 2SLGBTQQIA people.

5.11 We call upon all governments to increase accessibility to meaningful and culturally appropriate justice practices by expanding restorative justice programs and Indigenous Peoples' courts.

5.12 We call upon federal, provincial, and territorial governments to increase Indigenous representation in all Canadian courts, including within the Supreme Court of Canada.

5.13 We call upon all provincial and territorial governments to expand and adequately resource legal aid programs to ensure that Indigenous women, girls, and 2SLGBTQQIA people have access to justice and meaningful participation in the justice system. Indigenous women, girls, and 2SLGBTQQIA people must have guaranteed access to legal services to defend and assert their human rights and Indigenous rights.

5.23 We call upon the federal government to create a Deputy Commissioner for Indigenous Corrections to ensure corporate attention to, and accountability regarding, Indigenous issues.

5.24 We call upon the federal government to amend data collection and intake-screening processes to gather distinctions-based and intersectional data about Indigenous women, girls, and 2SLGBTQQIA people.

Calls for Police Services:

9.1 We call upon all police services and justice system actors to acknowledge that the historical and current relationship between Indigenous women, girls, and 2SLGBTQQIA people and the justice system has been largely defined by colonialism, racism, bias, discrimination, and fundamental cultural and societal differences. We further call upon all police services and justice system actors to acknowledge that, going forward, this relationship must be based on respect and understanding, and must be led by, and in partnerships with, Indigenous women, girls, and 2SLGBTQQIA people.

9.2 We call upon all actors in the justice system, including police services, to build respectful working relationships with Indigenous Peoples by knowing, understanding, and respecting the people they are serving. Initiatives and actions should include, but are not limited to, the following measures:

- i. Review and revise all policies, practices, and procedures to ensure service delivery that is culturally appropriate and reflects no bias or racism toward Indigenous Peoples, including victims and Survivors of violence.

- ii. Establish engagement and partnerships with Indigenous Peoples, communities, and leadership, including women, Elders, youth, and 2SLGBTQQIA people from the respective territories and who are resident within a police service's jurisdiction.
- iii. Ensure appropriate Indigenous representation, including Indigenous women, girls, and 2SLGBTQQIA people, on police services boards and oversight authorities. I
- iv. Undertake training and education of all staff and officers so that they understand and implement culturally appropriate and trauma-informed practices, especially when dealing with families of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people.

9.3 We call upon all governments to fund an increase in recruitment of Indigenous Peoples to all police services, and for all police services to include representation of Indigenous women, girls, and 2SLGBTQQIA people, inclusive of diverse Indigenous cultural backgrounds, within their ranks. This includes measures such as the following:

- i. Achieve representative First Nations, Inuit, and Métis diversity and gender diversity within all police services through intensive and specialized recruitment across Canada.
- ii. Ensure mandatory Indigenous language capacity within police services.
- iii. Ensure that screening of recruits includes testing for racial, gender, gender identity, and sexual orientation bias.
- iv. Include the Indigenous community in the recruitment and hiring committees/process.
- v. In training recruits, include: history of police in the oppression and genocide of Indigenous Peoples; anti-racism and anti-bias training; and culture and language training. All training must be distinctions-based and relevant to the land and people being served; training must not be pan-Indigenous.
- vi. Retain Indigenous officers through relevant employment supports and offer incentives to Indigenous officers to meet their unique needs as Indigenous officers serving Indigenous communities, to ensure retention and overall health and wellness of the service.
- vii. End the practice of limited-duration posts in all police services, and instead implement a policy regarding remote and rural communities focused on building and sustaining a relationship with the local community and cultures. This relationship must be led by, and in partnership with, the Indigenous Peoples living in those remote and rural communities.

9.4 We call upon non-Indigenous police services to ensure they have the capacity and resources to serve and protect Indigenous women, girls, and 2SLGBTQQIA people. We further call upon all non-Indigenous police services to establish specialized Indigenous policing units within their services located in cities and regions with Indigenous populations.

- i. Specialized Indigenous policing units are to be staffed with experienced and well-trained Indigenous investigators, who will be the primary investigative teams and officers overseeing the investigation of cases involving Indigenous women, girls, and 2SLGBTQQIA people.
- ii. Specialized Indigenous policing units are to lead the services' efforts in community liaison work, community relationship building, and community crime-prevention programs within and for Indigenous communities.
- iii. Specialized Indigenous policing units, within non-Indigenous police services, are to be funded adequately by governments.

9.6 We call upon all police services to establish an independent, special investigation unit for the investigation of incidents of failures to investigate, police misconduct, and all forms of discriminatory practices and mistreatment of Indigenous Peoples within their police service. This special investigation unit must be transparent in practice and report at least annually to Indigenous communities, leadership, and people in their jurisdiction.

9.7 We call upon all police services to partner with front-line organizations that work in service delivery, safety, and harm reduction for Indigenous women, girls, and 2SLGBTQQIA people to expand and strengthen police services delivery.

9.8 We call upon all police services to establish and engage with a civilian Indigenous advisory committee for each police service or police division, and to establish and engage with a local civilian Indigenous advisory committee to advise the detachment operating within the Indigenous community.

Relevant Calls for Attorneys and Law Societies:

10.1 We call upon the federal, provincial, and territorial governments, and Canadian law societies and bar associations, for mandatory intensive and periodic training of Crown attorneys, defence lawyers, court staff, and all who participate in the criminal justice system, in the area of Indigenous cultures and histories, including distinctions-based training. This includes, but is not limited to, the following measures:

- i. All courtroom officers, staff, judiciary, and employees in the judicial system must take cultural competency training that is designed and led in partnership with local Indigenous communities.
- ii. Law societies working with Indigenous women, girls, and 2SLGBTQQIA people must establish and enforce cultural competency standards.

- iii. All courts must have a staff position for an Indigenous courtroom liaison worker that is adequately funded and resourced to ensure Indigenous people in the court system know their rights and are connected to appropriate services.

Survivor Safety Matters

Proposed Amendments to Section 278.1-278.3 CCC
July 17, 2025

Submission to:

Department of Justice and Attorney General of Canada
Minister of Women and Gender Equality
Chair, Status of Women Committee
Chair, Standing Committee on Finance
Chair, Standing Committee on National Defence

We think this is wrong



Proposed Amendments to Section 278.1-278.3 of the *Criminal Code* (in blue):

1. Amendment to the Definition of *record* (278.1)

Definition of *record*

278.1 For the purposes of sections 278.2 to 278.92, ***record*** means any form of record that contains personal information for which there is a reasonable expectation of privacy and includes medical, psychiatric, **therapeutic, counselling**, education, employment, child welfare, adoption and social services records, **personal journals and diaries**, and records containing personal information the production or disclosure of which is protected by any other Act of Parliament or a provincial legislature, but does not include records made by persons responsible for the investigation or prosecution of the offence.

Notwithstanding the foregoing, the following records shall be excluded from production, inspection, or disclosure under this Part:

(a) Records created by or for the purpose of providing counselling, therapy, or mental health treatment to the complainant prior to or during proceedings under sections 271 to 273.1;

(b) Personal journals, diaries, or other writings created by the complainant for private use or personal reflection.

These records shall be deemed inadmissible and non-compellable for subpoena, production, or disclosure to the court, unless the complainant provides express, written, and informed consent identifying the specific portion(s) to be disclosed and the limited purpose for which disclosure is authorized.

The complainant shall retain full and sole discretion over which, if any, parts of such records are disclosed. No adverse inference shall be drawn by the court, jury, or any party from a complainant's decision to withhold, in whole or in part, any such record.

2. Add new section: Protected Categories of Records (278.1.1)

278.1.1 – Protected Categories of Records

278.1.1 (1) Subject to subsection (3), no order shall be made under this Part for the production, inspection, or disclosure of the following records in proceedings under sections 271 to 273.1:

(a) Records created by or for the purpose of providing counselling, therapy, or mental health treatment to the complainant;

(b) Personal journals, diaries, or other writings created by the complainant for personal use or private reflection.

(2) These categories of records shall be deemed inadmissible and not compellable in court or at any stage of the criminal proceeding unless disclosed under subsection (3).

(3) A complainant may waive, in whole or in part, the protections provided under this section by giving prior, written, informed, and voluntary consent. The consent must identify:

(a) the specific portion(s) of the protected record to be disclosed; and

(b) the specific purpose for which disclosure is authorized.

(4) No adverse inference may be drawn by the court, jury, or any party from the complainant's decision to exercise or maintain these protections in whole or in part.

3. Amendments to Marginal note: Insufficient grounds (278.3)

Marginal note: Insufficient grounds

(4) Any one or more of the following assertions by the accused are not sufficient on their own to establish that the record is likely relevant to an issue at trial or to the competence of a witness to testify:

(a) that the record exists;

(b) that the record relates to medical or psychiatric treatment, ~~therapy or counselling~~ that the complainant or witness has received or is receiving;

(c) that the record relates to the incident that is the subject-matter of the proceedings;

(d) that the record may disclose a prior inconsistent statement of the complainant or witness;

(e) that the record may relate to the credibility of the complainant or witness;

(f) that the record may relate to the reliability of the testimony of the complainant or witness merely because the complainant or witness has received or is receiving psychiatric treatment, ~~therapy or counselling~~;

(g) that the record may reveal allegations of sexual abuse of the complainant by a person other than the accused;

(h) that the record relates to the sexual activity of the complainant with any person, including the accused;

(i) that the record relates to the presence or absence of a recent complaint;

(j) that the record relates to the complainant's sexual reputation; or

(k) that the record was made close in time to a complaint or to the activity that forms the subject-matter of the charge against the accused.

4. **Add new section: Marginal note: Primacy of complainant's dignity and privacy (278.3)**

Marginal note: Primacy of complainant's dignity and privacy

(5) In interpreting and applying sections 278.1 to 278.91, the court shall give primary consideration to the complainant's rights to dignity, personal security, and privacy, consistent with the principles of fundamental justice and the Canadian Charter of Rights and Freedoms.

(6) The court shall not compel the production, inspection, or disclosure of any protected record under section 278.1.1 unless the complainant has provided consent as described in that section.

(7) The exercise of the complainant's right to withhold such records shall be deemed a reasonable and expected assertion of personal autonomy. No adverse inference shall be drawn on that basis.

And renumber items below for the inclusion.

◆ **Why These Amendments Are Necessary**

It is widely accepted that counselling, therapy, and personal journaling are essential tools for trauma recovery. These processes help victims of sexual offences organize their thoughts, understand the harm they've experienced, and support long-term healing. Crucially, counselling records are not created for the purpose of future disclosure, particularly not to an accused perpetrator. They reflect a therapist's subjective impressions of a fluid, confidential conversation and may not accurately capture the full context. Furthermore, complainants typically do not review these notes and are often unaware of their content until a subpoena is issued.

The Canadian Criminal Justice System (CJS) is not designed with the healing or safety of complainants in mind. It is well documented that victims of sexual offences are further harmed by engagement with the justice process. These systemic harms have been acknowledged for decades, and yet meaningful protections remain lacking.

Inconsistent application of section 278.1 by the judiciary - often influenced by implicit bias or outdated legal training - undermines the intent of Parliament to provide protections to victims. Clear legislative amendments are required to explicitly codify the priority of victim dignity, safety, and privacy.

◆ **Incentivized Misuse of Section 278.1 by the Defence**

Section 278.1 applications have evolved into a routine legal strategy by defence counsel—not to uncover relevant evidence, but to intimidate and destabilize complainants. Defence lawyers are incentivized to bring these applications to pressure complainants into abandoning their participation, or to create a

chilling effect on those considering reporting. The objective is not about credibility; rather, it is to discredit, retraumatize, and deter victims from seeking justice.

These pre-trial motions often force victims into invasive processes where they must choose between surrendering their most private records or watching their case collapse. The result is a growing number of victims withdrawing from proceedings entirely.

Additionally, the pre-trial delay caused by these applications can be used as a tactic to stretch court timelines and approach the Jordan threshold – potentially resulting in stays of proceedings. In effect, defence misuse of section 278.1 becomes a tool to frustrate justice and deny resolution to victims.

By prohibiting the compelled disclosure of these personal records, Parliament can help eliminate coercive tactics from the courtroom, restore fairness, and reaffirm the right of victims to dignity and personal security.

◆ **Reduced Burden on the Court System**

The current Criminal Code regime under section 278.1 places a disproportionate and unnecessary administrative burden on the justice system. Defence applications for third-party records – particularly therapy notes, counselling records, and personal journals – frequently require judges to review deeply private, highly sensitive material that has no probative value and was never intended for legal scrutiny.

These records are not contemporaneous statements about the alleged crime. They are tools of personal recovery and introspection – created exclusively to help victims make sense of their experiences, process trauma, and reintegrate into society. Requiring judges to examine these materials not only misuses their time and expertise, but also distracts from the core facts and delays trial proceedings.

The sheer volume of disclosure requests has created significant backlogs and administrative inefficiencies at every level of the court system. Crown prosecutors must divert time and resources to manage these applications. Third-party service providers – such as therapists, counsellors, and sexual assault centres – are compelled to respond to subpoenas using their own limited financial and human resources to engage legal counsel and protect client confidentiality.

Meanwhile, courts are burdened with pre-trial motions requiring judges to examine large volumes of sensitive and often irrelevant personal material. These applications add no legitimate evidentiary value and distract from central legal issues.

Eliminating the compelled production of such records would alleviate pressure on court resources, service providers, and Crown counsel, while refocusing judicial time on matters of actual probative significance.

Removing counselling records, therapeutic notes, and personal journals from the scope of compellable disclosure will significantly reduce these systemic inefficiencies. It will also realign the court's time and energy toward matters of actual evidentiary relevance—protecting judicial integrity, improving trial efficiency, and preventing further retraumatization of complainants.

◆ Cost Savings

Legal Aid resources are currently consumed on both sides of section 278.1 applications—funding defence efforts to obtain private records, and complainant counsel to resist those applications. This dual expenditure is wasteful and diverts funds away from meaningful support.

Additionally, there can be mid-trial applications under section 278.1 that cause significant delays and contribute to Jordan stay risks. When cases are stayed for delay, the substantial financial investment in pre-trial motions, legal counsel, and court time is effectively lost, and no justice is delivered.

By removing private counselling records and personal writings from the scope of admissibility, government resources can be better allocated to support services for complainants, trauma-informed legal training, and development and enforcement of better victim protections.

◆ Upholding the Charter Rights of Complainants

The forced disclosure of private therapeutic and counselling records undermines several Charter protections of complainants:

- **Section 7** – Security of the person: Coerced disclosure violates victims’ psychological integrity and autonomy.
- **Section 15** – Equality: Victims do not receive equal treatment or protection under the law compared to the accused.
- **Section 28** – Gender equality: Section 278.1 applications disproportionately affect women, the majority of sexual assault complainants.
- **Section 12** – Cruel and unusual treatment: The use of highly personal, therapeutic material in adversarial legal proceedings often retraumatizes victims, amounting to cruel treatment.

The Canadian Victims Bill of Rights (CVBR) remains unenforceable in practice, and legislative reforms to section 278.1–278.3 are necessary to give meaningful effect to victims’ rights to dignity, respect, and justice.

◆ Conclusion

Amending sections 278.1–278.3 of the Criminal Code to exclude counselling records, therapeutic materials, and personal journals from compellable disclosure—except where the complainant provides specific, informed, written consent—will:

- Protect complainants from intimidation and retraumatization;
- Reduce administrative and financial burdens on the justice system;
- Ensure efficient use of court time and resources;
- Promote Charter-consistent, trauma-informed legal practices;
- Uphold Canada's obligations to victims of sexual violence.

These reforms are necessary to bring Canada's criminal justice response into alignment with societal expectations, legal principles, and the Government's duty to uphold human rights and dignity for all victims of crime.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Alexa Barkley'.

Alexa Barkley

A handwritten signature in blue ink, appearing to read 'Tanya Couch'.

Tanya Couch