



Submission to Senate Committee on Legal and Constitutional Affairs

Bill C-16, *An Act to amend certain Acts in relation to criminal and correctional matters*

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Overview

In a functional criminal justice system, unreasonable delay should not occur in criminal proceedings. To prevent that outcome, it is essential that all levels of government work together to ensure the system is adequately resourced and effectively operated.

Someone accused of a crime, who retains the presumption of innocence, should not face an unknown period of time before their day in court. Restrictions imposed on their liberty, whether while on pre-trial release or in pre-trial detention, should be resolved expeditiously. A victim of a crime should be able to count on timely justice.

Our criminal justice system does not deliver on these objectives. And we must fix that. Bill C-16, however, does not solve the root problems which contribute to unreasonable trial delay. Instead, it is an attempt to legislate away compliance with s. 11(b) of the *Canadian Charter of Rights and Freedoms*, in violation of longstanding Supreme Court precedent. This brief will explain why that is the case. It will also propose targeted amendments to the proposed test to determine a remedy for a s. 11(b) violation, provisions addressing mandatory minimum sentences, and the statutory scheme pertaining to third-party records in sexual offence proceedings.

About CCLA

The CCLA is a non-governmental, non-partisan, national civil liberties organisation. Founded in 1964, CCLA and its membership promote respect for and recognition of fundamental human rights and civil liberties. For over fifty years, CCLA has litigated public interest cases before appellate courts, assisted Canadian governments with developing legislation, and published expert commentary on the state of Canadian law.

Understanding *R. v. Jordan*

[T]he Canadian public expects their criminal justice system to bring accused persons to trial expeditiously. As the months following a criminal charge become years, everyone suffers. Accused persons remain in a state of uncertainty, often in pre-trial detention. Victims and their families who, in many cases, have suffered tragic losses cannot move forward with their lives. And the public, whose interest is served by promptly bringing those charged with criminal offences to trial, is justifiably frustrated by watching years pass before a trial occurs.¹

- The Supreme Court of Canada in *R. v. Jordan* (2016)

Section 11(b) of the *Charter* establishes that any person charged with an offence has the right to be tried within a reasonable time. This is a foundational right in societies across the world and it is also enumerated in article 14(3)(c) of the *International Covenant on Civil and Political Rights*.²

As noted by the Department of Justice:

Section 11(b) recognizes the stigmatization, loss of privacy, and stress and anxiety created by the cloud of suspicion that accompanies criminal proceedings. It also recognizes that the right to a fair trial is protected by attempting to ensure that proceedings take place while evidence is available and fresh, and that delay can prejudice the ability of the defendant to lead evidence, cross-examine witnesses or otherwise raise a defence.³ [Citations omitted]

Jordan established two presumptive ceilings for criminal proceedings. The first, 18 months, for matters tried in provincial court. The second, 30 months, for matters tried in superior court. If a person is released on bail, they will likely spend this period with various restrictions on their liberty. Alternatively, they will be in pre-trial detention.

The *Jordan* 'clock' begins after a charge has been laid and ends on the actual or anticipated end of trial. The presumptive ceilings may permissibly be exceeded because of exceptional circumstances, which include specific events or case complexity. Defence-caused delay does not count toward the presumptive ceiling. A s. 11(b) violation may also be found if a matter is below the presumptive ceiling, but the defence took meaningful steps to expedite the proceedings and the case took markedly longer than it should have.⁴

Prior to *Jordan*, courts relied on a multi-factor test to determine if s. 11(b) was violated. The reason for revisiting this test included that it was unpredictable in application and often interpreted to "permit endless flexibility".⁵ The Supreme Court observed that a culture of complacency around delay had set in, among all of those responsible for the operation and administration of the criminal justice system.⁶ The purpose of the *Jordan* ceilings was to "give meaningful direction to the state on its constitutional obligations and to those who play an important role in ensuring that the trial concludes within a reasonable time: court administration, the police, Crown prosecutors, accused persons and their counsel, and judges."⁷

Without the *Jordan* ceilings, there would be no fixed limit on how long a criminal proceeding can take. *Jordan* acts as the strongest constraint requiring the justice system to run on time. Under Bill C-16, proceedings could regularly proceed over 2 ½ years in superior court while someone remains behind bars in pre-trial detention. They would be legally presumed innocent, could be acquitted, and nonetheless have lost their liberty for years while waiting for their day in court.

The constitutional problem with Bill C-16.

The Constitution is the supreme law of Canada. The principle of constitutionalism finds clear expression in s. 52(1) of the *Constitution Act, 1982*. Thus, "with the adoption of the *Charter*, the Canadian system

of government was transformed to a significant extent from a system of Parliamentary supremacy to one of constitutional supremacy.”⁸

- The Supreme Court of Canada in *R. v. Power* (2024)

Parliament does not have the power to overrule the determination of what is an appropriate and just remedy under s. 24(1) of the *Charter*. Bill C-16 seeks to make an end run around that requirement. It explicitly legislates to overrule 40 years of settled Supreme Court of Canada jurisprudence by ousting a stay of proceedings as the minimum remedy for a s. 11(b) violation. Section 24(1) of the *Charter* outlines the power of a court to fashion a remedy for the violation of a *Charter* right:

24. (1) Anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

The Supreme Court has held this discretion is “broad” and “it is difficult to imagine language which could give the court a wider and less fettered discretion”.⁹ The power of the judiciary in this regard is important from a democratic accountability perspective. If the legislative branch could limit or dictate to the judiciary the remedy available for a *Charter* violation, it would significantly undermine a court’s ability to stop the violation at issue.

In the 1987 decision *R. v. Rahey*, the majority of the Supreme Court of Canada unequivocally held that a stay is the minimum remedy for a breach of s. 11(b). That has remained the law since.

Chief Justice Dickson and Justice Lamer

I have explained why a stay is the minimal remedy. If an accused has the constitutional right to be tried within a reasonable time, he has the right not to be tried beyond that point in time, and no court has jurisdiction to try him or order that he be tried in violation of that right....To allow a trial to proceed after such a finding would be to participate in a further violation of the *Charter*.¹⁰

Justice Beetz and Justice Le Dain

I am of the view that a stay of proceedings is the appropriate and just remedy for an infringement of the right to be tried within a reasonable time.¹¹

Justice Estey and Justice Wilson

I believe that only one remedy – a stay of proceedings – is available under s. 24(1) where jurisdiction has been lost by the passage of an unreasonable period of time prior to the disposal of criminal charges against an accused.¹²

[Emphasis added.]

This is not a case where a court has struck down legislation for violating the *Charter* and invited Parliament to propose *Charter* compliant legislation, which would be a clear opportunity for the dialogue principle.¹³ Nor is this a case where a court has held a spectrum of remedies is available, providing Parliament an opportunity to suggest useful principles in determining which remedy may be suitable in a given case.¹⁴ The Supreme Court has already ruled and there is no uncertainty in its decision.

As Kent Roach CM, one of Canada's foremost criminal constitutional scholars and an expert on *Charter* remedies wrote: "The *Charter* decisions that Bill C-16 attacks are controversial. Nevertheless, they are decisions that the Supreme Court was entitled to make and it has declined invitations to overrule them. It seems as if the government now wants to do this for the Court."¹⁵ The full article can be read [here](#).

There may well be public and political support for this provision. It may feel as though there is little cost to crossing this boundary of constitutional compliance. But make no mistake, the erosion of the rule of law does not occur in a day. When a branch of government acts to violate the constitutional framework of Canada, that begins the dangerous normalization of what was before a red line. The federal and provincial governments are entitled to litigate whether a stay should remain the minimum remedy for a s. 11(b) violation. But they cannot dictate it.

In these circumstances, this committee has recognized that enacting ordinary legislation alone is not a permissible route to take. The 2017 report by the Standing Senate Committee on Legal and Constitutional Affairs, *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada*, recommended "that a reference to the Supreme Court of Canada be made by the Attorney General of Canada to ensure the constitutionality of the proposed changes to the *Criminal Code* to give effect to the remedy" where a change is sought.¹⁶

In addition to the constitutional basis for a reference, it would prevent added uncertainty and delay from the inevitable constitutional challenges to the new provisions. Without such a reference, the provisions will likely be challenged in trial courts across the country shortly after enactment. Those judgments will then likely be appealed. Complainants and accused will remain in a state of flux about the outcome of a given case as new litigation on s. 11(b) works its way through the system over several years. Ultimately, the Supreme Court of Canada will be asked to deliver a final ruling in any event.

An amendment requiring a reference to the Supreme Court of Canada was suggested by the CCLA and moved by MP Jenny Kwan before the Standing Committee on Justice and Human Rights. Unfortunately, it was unsuccessful and the CCLA does not seek to revisit the issue before the LCJC.

There are constitutionally compliant legislative measures to address delay.

The concerns that complainants and the public hold about proceedings being stayed are legitimate. This issue must be proactively addressed by both the provincial/territorial and federal governments. Bill C-16, however, does not address several factors which contribute to delay and where the federal government could take action. For example:

Increasing the number of federally appointed judges.

There is no statutory mechanism to regularly consider or automatically appoint more superior and appellate court judges in Canada based on population growth or judicial caseload. The result is a justice system under strain. Six out of ten provincial superior courts have requested additional judicial positions from the federal government.¹⁷ As the Chief Justice of the Ontario Superior Court of Justice recently explained, “Simply put: there are not enough judges to meet the demands of the number of cases in the system.”¹⁸

Facilitating the use of pre-charge screening.

In Canada, provinces and territories use two different models to begin the criminal process. In 10 provinces and territories, an officer makes the decision to lay a charge. A case then proceeds through the criminal justice system. It will be screened by a Crown prosecutor at some point, who can make a determination to withdraw the charge if it is in the public interest or there is no reasonable likelihood of conviction.

However, in Quebec, British Columbia, and New Brunswick, a Crown must approve a charge before it is laid in a process called pre-charge screening. This ensures that unnecessary charges, particularly those that would ultimately be withdrawn, do not consume limited justice system resources from the outset.

A snapshot across provinces illustrates the likely impact of pre-charge screening. The percentage of charges that are stayed or withdrawn in pre-charge screening jurisdictions like BC (35.2%) and NB (27.4%), are markedly lower than ON (56.3%), AB (57.4%), and NS (45%).¹⁹

The federal government could provide a statutory framework in the *Criminal Code* to increase the uptake of pre-charge screening in the provinces and territories, thereby relieving some strain on the criminal justice system.

Legislating requirements for timeliness of disclosure.

Disclosure refers to the evidence that the state is constitutionally obligated to provide the accused so they can make full answer and defence to the charges. Late disclosure in the criminal justice system is a persistent problem.²⁰ When disclosure is late or

incomplete, it may significantly delay a matter proceeding to trial or a plea. As one court put it, “outstanding disclosure adds to continuous remands on lengthy dockets in Provincial Court and results in redundant work to court staff and parties in an already overburdened, under-resourced and technologically strained system.”²¹

Amendment 1: Add “the prejudice of unreasonable delay to the administration of justice” as a relevant factor to determine remedy.

As discussed, Bill C-16 would structure how a court may fashion a remedy for a s. 11(b) *Charter* violation. Recall that at this juncture, the state has breached the *Jordan* ceilings (18 or 30 months). The ceilings have not been breached because of unreasonable defence delay. It is the state that has failed to fulfill its constitutional obligation to someone presumed innocent. Does the state have the right to persist in its prosecution? Bill C-16 adds Section 492.31 of the *Code* to answer this question:

Alternative remedies to be considered

492.31 (1) A court shall not order a stay of proceedings as a result of a finding of unreasonable delay unless it is satisfied that no other remedy would be appropriate and just in the circumstances.

Factors to be considered

(2) In determining whether a remedy other than a stay of proceedings is appropriate and just, the court shall take into account the following factors:

(a) the stage of the proceedings during which the finding of unreasonable delay is made or during which the delay became unreasonable;

(b) the impact that a stay of proceedings is likely to have on any victim of the offence;

(c) the prejudice that has been or would be suffered by the accused or offender as a result of unreasonable delay;

(d) the public’s confidence in the administration of justice; and

(e) the interest that society has in having a final decision on the merits.

The CCLA proposes adding a new factor to the above provision: the “prejudice of unreasonable delay to the administration of justice”.

This amendment would partly address well-recognized challenges to the use of prejudice to the accused as a factor when assessing the impact of delay. Prior to *Jordan*, prejudice to the accused was one factor in the test to determine if delay was

unreasonable. The Supreme Court squarely identified the problem with this approach based on a review of the s. 11(b) jurisprudence:

- It is “confusing” and “hard to prove”.
- “It may not always be easy to distinguish between prejudice stemming from delay versus the charge itself.”
- “[E]ven if sufficient evidence is adduced, the interpretation of that evidence is highly subjective.”
- “[T]he public’s interests in a trial within a reasonable time does not necessarily turn on how much suffering an accused has endured. Delayed trials may also cause prejudice to the administration of justice.”²²

The Court jettisoned a freestanding prejudice to the accused factor and noted, “[o]nce the [*Jordan*] ceiling is breached, we presume that accused persons will have suffered prejudice to their *Charter*-protected liberty, security of the person, and fair trial interests.”²³

In Bill C-16, the re-introduction of prejudice as a factor at the stage of determining remedy does not resolve the challenges observed by the court in *Jordan*. The CCLA’s suggested amendment would partly address this shortcoming. It would recognize that prejudice to the overall administration of justice is also relevant, not only prejudice to an individual accused. This would appropriately capture a relevant form of prejudice not accounted for in the current listed factors. A criminal justice system that tolerates delays of four, five years, or more to bring an accused to trial is not a just one.

Amendment 2: Permit non-custodial sentences under the mandatory minimum ‘safety valve’ to ensure compliance with the *Charter*.

Section 12 of the *Charter* states that, “Everyone has the right not to be subject to any cruel and unusual treatment or punishment.” The Supreme Court has held since 1987 that s. 12 prohibits the imposition of a grossly disproportionate sentence.²⁴ When assessing whether a mandatory minimum sentence is grossly disproportionate, the Court applies the following framework:

1. Assess what constitutes a fit and proportionate sentence having regard to the objectives and principles of sentencing in the *Criminal Code*.
2. Consider whether the impugned provision requires the imposition of a sentence that is grossly disproportionate, not merely excessive, to the fit and proportionate sentence. The constitutional bar is set high to respect Parliament’s general authority to choose penal methods that do not amount to cruel and unusual punishment.

[41] This two-part assessment may proceed on the basis of either (a) the actual offender before the court, or (b) another offender in a reasonably foreseeable case or hypothetical scenario.²⁵ [Citations omitted.]

The rationale for the assessment to include reasonably foreseeable cases was summarized by then Chief Justice McLachlin in *R. v. Nur*:

The protection of individuals' rights demands constitutional review that looks not only to the situation of the offender before the court, but beyond that to the reasonably foreseeable reach of the law. Testing the law against reasonably foreseeable applications will prevent people from suffering cruel and unusual punishment in the interim until the mandatory minimum is found to be unconstitutional in a particular case.²⁶

The Supreme Court has also recognized that a mandatory minimum sentence which retains some residual judicial discretion could preclude a finding that there is a s. 12 violation.²⁷ This is the 'safety valve' that Bill C-16 proposes. While the CCLA opposes mandatory minimum sentences in all circumstances, the safety valve proposed in Bill C-16 contains a fatal flaw. If it is allowed to stand, this will result in a flurry of renewed litigation and jurisprudential uncertainty.

In *Lloyd*, the Supreme Court spoke to one requirement of a safety valve provision to save an otherwise unconstitutional mandatory minimum:

There is no precise formula and only one requirement — that the residual discretion allow for a lesser sentence where application of the mandatory minimum would result in a sentence that is grossly disproportionate to what is fit and appropriate and would constitute cruel and unusual punishment.²⁸ [Emphasis added.]

The key term is "lesser sentence". However, the safety valve in C-16 still requires a mandatory minimum of one day of imprisonment. This is in direct tension with the Supreme Court's observation that:

A mandatory minimum sentence, however, will be constitutionally suspect and require careful scrutiny when it provides no discretion to impose a sentence other than imprisonment in circumstances where there should not be imprisonment, given the gravity of the offence and the offender's culpability.²⁹

By way of example, this could be if a young person intentionally discharged a paintball gun inside a residence not toward any person, resulting in no injury. This was a reasonable hypothetical relied on by the Supreme Court in *Hills* that could ground a conviction for reckless discharge of a firearm.³⁰

To remedy this flaw with the safety valve, the CCLA proposes the following amended language under Section 63 – new language bolded:

718.4 (1) When imposing a sentence for an offence that has a minimum punishment of a specified term of imprisonment, a court shall impose a **lesser sentence** ~~shorter term of imprisonment than the specified term~~

if, in the circumstances, the minimum punishment would amount to cruel and unusual punishment for that offender.

[...]

~~(5) For the purposes of this Part, the shorter term of imprisonment imposed under subsection (1) is a minimum term of imprisonment.~~

Amendment 3: Remove the reinstitution of mandatory minimum sentences that have been struck down as unconstitutional.

Bill C-16 would reinstitute mandatory minimum sentences that have previously been struck down as unconstitutional by the Supreme Court.

Sentencing for a criminal offence in Canada is a case-specific and nuanced process. The fundamental principle of sentencing is proportionality: a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. A judge must also weigh the statutorily established objectives of sentencing, such as denunciation, rehabilitation, and deterrence. A judge must also take into consideration other enumerated principles and aggravating or mitigating factors.³¹

A person may commit a criminal offence for a myriad of reasons and their life circumstances can vary widely. They may be economically desperate. They may be a hardened offender. They may be a young person with no prior encounter with the law. By the time of sentencing, their rehabilitative efforts may also vary. They may have pleaded guilty and accepted responsibility. They may have joined a program to exit criminal activity. It is for this reason that the role of a sentencing judge, and their ability to exercise discretion, is critical. The sentencing judge hears from the Crown, the offender, and the victim. They may hold a hearing so aggravating factors can be established. They will receive material providing detailed insight on the person before them.

Mandatory minimum sentences undermine the central importance of proportionality in sentencing. They constrain judges' ability to craft a sentence that is responsive to the myriad of factors that may be relevant in a given case. Where court decisions over many years have recognized that certain mandatory minimums can lead to grossly disproportionate outcomes, the CCLA strongly advises against reopening the door to them. The re-introduction of these mandatory minimums will result in renewed litigation and uncertainty in the sentencing process.

The CCLA proposes that Section 87, which reinstitutes all mandatory minimum sentences previously struck down, be removed.

Amendment 4: Retain the “likely relevant” threshold for the production and disclosure of therapeutic records.

The *Criminal Code* contains a comprehensive framework that, in sexual offence proceedings, protects complainants’ privacy interests in certain records held by third parties. This framework contains protections for the right to make full answer and defence, which is a principle of fundamental justice under s. 7 of the *Charter* and essential to preventing wrongful convictions.³² When considering the production or disclosure of such records, the law is settled that the privacy interest is “very high”.³³ These protections already apply to therapeutic records as defined in Bill C-16. The CCLA submits the change proposed in Bill C-16 is not advisable because:

- Parliament has fashioned a constitutionally upheld scheme that meaningfully protects the privacy interests of complainants.
- Judicial decisions demonstrate sensitivity to and regard for the high privacy interests of therapeutic records in sexual offence proceedings.
- The onerous standard of the innocence-at-stake exemption yields to almost no exceptions, raising the risk of wrongful convictions.

As it stands, there are two stages in the process for an accused person to obtain a third-party record. First, they must submit an application in writing to a judge which establishes the information is likely relevant to an issue at trial or the competence of a witness to testify. In that application, an accused person may not rely on a number of justifications. For example: the bare assertion that a record exists or is therapeutic in nature, the fact it relates to the subject matter of the charge, or that it may disclose a prior inconsistent statement.³⁴

If the judge determines the accused has met their burden at stage one, the record is produced to the judge alone to review.³⁵ This is the second stage of the process. Here, now in possession of the record, a judge must determine if it is likely relevant to an issue at trial or the competence of a witness to testify.³⁶ Further, the judge must determine if it is in the interests of justice to produce the record. A judge must assess:

- (a) the extent to which the record is necessary for the accused to make a full answer and defence;
- (b) the probative value of the record;
- (c) the nature and extent of the reasonable expectation of privacy with respect to the record;
- (d) whether production of the record is based on a discriminatory belief or bias;
- (e) the potential prejudice to the personal dignity and right to privacy of any person to whom the record relates;
- (f) society’s interest in encouraging the reporting of sexual offences;
- (g) society’s interest in encouraging the obtaining of treatment by complainants of sexual offences; and

(h) the effect of the determination on the integrity of the trial process.³⁷

A judge may then order the record not produced to the accused, produced in full, or produced in part. In addition, a judge can order restrictions on who may view the record and how they view it.³⁸ Reported cases demonstrate that judges apply the statutory framework set out by Parliament carefully. In some cases, the applications are rejected, and in others they are accepted.

For example, there are reported cases where an accused has sought counselling records on the basis they would explain why a complainant reported an incident. With only that bare assertion, these applications have been rejected as a “fishing expedition” and denied.³⁹ Conversely, there are reported cases where medical records have been sought where there is a credible basis that a medical condition may have affected the complainant’s ability to accurately recall events or be truthful. With an evidentiary foundation to support that proposition, applications of this nature have been successful.⁴⁰ There are also cases where an application has been made for counselling records at the first stage of the process, ordered produced, but upon review by a judge, not ordered disclosed to the accused.⁴¹

The cases above are intended to illustrate that courts can capably apply the statutory regime presently set out by Parliament. They do so with serious regard for the privacy interests of complainants and the right to make full answer and defence.

The proposal in Bill C-16 would markedly change the current, constitutionally upheld, framework. It would impose the highest threshold that exists within criminal law for the accused to access information: the innocence-at-stake exception. To date, this exception has only applied to solicitor-client privilege and informer privilege (protecting confidential informants). In these contexts, the Supreme Court has described the exception as applicable in “rare circumstances” and “only in the most unusual cases”.⁴²

An exceedingly restrictive threshold for an accused to access information necessary for full answer and defence to a criminal charge is a problem. It could meaningfully increase the likelihood of wrongful convictions because the trier of fact is deprived of information that would otherwise be likely relevant to an accused’s defence.

That does not entail, of course, that Parliament should not or cannot strengthen the consideration of the privacy interests held by complainants. For example, Parliament could codify the heightened privacy interest in therapeutic records with additional explanatory context. Or Parliament could add additional factors for courts to consider in the production of therapeutic records specifically. Legislative amendments of this nature would ensure a rigorous analysis continues to be applied in these cases, while still upholding the right to full answer and defence.

The CCLA proposes that all language in Section 34 and Section 155 of Bill C-16 be amended to retain the standard of “it is likely relevant to an issue at trial” in lieu of “evidence that could raise a reasonable doubt as to the accused’s guilt”.

¹ *R. v. Jordan*, 2016 SCC 27, at para. 2, online: <https://canlii.ca/t/gsds3>.

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- ² *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171, art 14(3)(c).
- ³ Department of Justice Canada, “Section 11(b) – Trial within a reasonable time”, Charterpedia, online: www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art11b.html.
- ⁴ *R. v. Jordan*, 2016 SCC 27, at paras. 48-49, online: <https://canlii.ca/t/gsds3>.
- ⁵ *R. v. Jordan*, 2016 SCC 27, at para. 32, online: <https://canlii.ca/t/gsds3>.
- ⁶ *R. v. Jordan*, 2016 SCC 27, at para. 40, online: <https://canlii.ca/t/gsds3>.
- ⁷ *R. v. Jordan*, 2016 SCC 27, at para. 50, online: <https://canlii.ca/t/gsds3>.
- ⁸ *Canada (Attorney General) v. Power*, 2024 SCC 26, at para. 55, online: <https://canlii.ca/t/k5vjlj>.
- ⁹ *Mills v. The Queen*, [1986] 1 S.C.R. 863, at para. 278, online: <https://canlii.ca/t/1cxmx>.
- ¹⁰ *R. v. Rahey*, [1987] 1 S.C.R. 588, at para. 48, online: <https://canlii.ca/t/1ftp7>.
- ¹¹ *R. v. Rahey*, [1987] 1 S.C.R. 588, at para. 58, online: <https://canlii.ca/t/1ftp7>.
- ¹² *R. v. Rahey*, [1987] 1 S.C.R. 588, at para. 62, online: <https://canlii.ca/t/1ftp7>.
- ¹³ Peter W Hogg & Allison A Bushell, “The Charter Dialogue between Courts and Legislatures (Or Perhaps the Charter of Rights Isn’t Such a Bad Thing after All)” (1997) 35:1 *Osgoode Hall Law Journal*, at pp. 81-82, online: <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1612&context=ohlj>.
- ¹⁴ Which would be a permissible purpose of a statute: *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, at para. 51, online: <https://canlii.ca/t/4nx4>.
- ¹⁵ Kent Roach, “The Carney government’s crime victim legislation is bad constitutional law” *The Globe and Mail* (22 December 2025), online: <http://www.theglobeandmail.com/opinion/article-bill-c-16-carney-government-crime-victim-legislation-constitutional>.
- ¹⁶ Standing Senate Committee on Legal and Constitutional Affairs, *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada* (Final Report) (June 2017) at p. 194, online: www.publications.gc.ca/site/eng/9.841873/publication.html
- ¹⁷ Catherine Lévesque, “Courts Across Canada Are Pleading for More Judges as Caseloads Surge and Delays Worsen” *National Post* (28 October 2025), online: <http://www.nationalpost.com/news/politics/courts-across-canada-are-pleading-for-more-judges>.
- ¹⁸ Geoffrey B Morawetz, “Annual Opening the Court Speech 2025” (2025), Ontario Superior Court of Justice (webpage), online: <http://www.ontariocourts.ca/scj/speech/2025/>.
- ¹⁹ Statistics Canada, *Table 35-10-0027-01, Adult criminal courts, number of cases and charges by type of decision* (7 October 2025), online: <https://doi.org/10.25318/3510002701-eng>.
- ²⁰ Standing Senate Committee on Legal and Constitutional Affairs, *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada* (Final Report) (June 2017) at pp. 116-120, online: www.publications.gc.ca/site/eng/9.841873/publication.html; see also, for a local example: *R. v. Turcios*, 2024 ONCJ 628, at para. 56, online: www.canlii.ca/t/k8843.
- ²¹ *R. v. Tessier*, 2021 MBPC 14, at para. 16, online: www.canlii.ca/t/jdpm6.
- ²² *R. v. Jordan*, 2016 SCC 27, at paras. 33, 34, 54: <https://canlii.ca/t/gsds3>.
- ²³ *R. v. Jordan*, 2016 SCC 27, at para. 54, online: <https://canlii.ca/t/gsds3>.
- ²⁴ *R. v. Nur*, 2015 SCC 15, at para. 39 citing *R. v. Smith*, [1987] 1 S.C.R. 1045, at p. 1073, online: www.canlii.ca/t/gh5ms.
- ²⁵ *R. v. Hills*, 2023 SCC 2, at para. 40, online: www.canlii.ca/t/jv4mz.
- ²⁶ *R. v. Nur*, 2015 SCC 15, at para. 63, online: www.canlii.ca/t/gh5ms.
- ²⁷ *R. v. Lloyd*, 2016 SCC 13, at para. 36, online: www.canlii.ca/t/gpg9t.
- ²⁸ *R. v. Lloyd*, 2016 SCC 13, at para. 36, online: www.canlii.ca/t/gpg9t.
- ²⁹ *R. v. Hills*, 2023 SCC 2, at para. 144, online: www.canlii.ca/t/jv4mz.
- ³⁰ *R. v. Hills*, 2023 SCC 2, at para. 5, online: www.canlii.ca/t/jv4mz.
- ³¹ *R. v. J.W.*, 2025 SCC 16, at paras. 38-46, online: www.canlii.ca/t/kc830.
- ³² *R. v. Mills*, [1999] 3 S.C.R. 668, at paras. 17, 87, online: <https://canlii.ca/t/1fqkl>.
- ³³ *R. v. Mills*, [1999] 3 S.C.R. 668, at para. 94, online: <https://canlii.ca/t/1fqkl>.
- ³⁴ *Criminal Code*, s. 278.3(4).
- ³⁵ *Criminal Code*, s. 278.6(1).
- ³⁶ *Criminal Code*, s. 278.5(1).
- ³⁷ *Criminal Code*, s. 278.5(2).
- ³⁸ *Criminal Code*, s. 278.7(3).
- ³⁹ *R. v. J.F.*, 2019 ONSC 2626; *R. v. Akumu*, 2016 BCSC 2500.
- ⁴⁰ *R. v. Moskalyk*, 2017 ONSC 6675.

⁴¹ *R. v. Fones*, 2009 MBQB 65; *R. v. Fones*, 2009 MBQB 239.

⁴² *R. v. Fox*, 2026 SCC 4, at paras. 1 and 40, online: <https://canlii.ca/t/kj15r>.