April 8, 2022

VIA EMAIL: JUST@parl.gc.ca

Mr. Randeep Sarai, M.P., Chair
c/o Jean-François Pagé, Clerk of the Committee
Standing Committee on Justice and Human Rights
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, Ontario K1A 0A6

Dear Mr. Sarai:

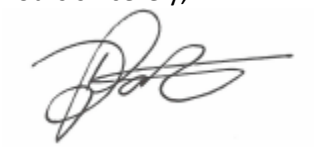
RE: Bill C-5, *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*

I write on behalf of The Advocates' Society, the leading national association of litigation counsel in Canada.

I understand that Bill C-5, *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act,* was referred to the Standing Committee on Justice and Human Rights for study on March 31, 2022.

Please find enclosed The Advocates' Society's submission to Minister of Justice David Lametti regarding Bill C-5, for the Standing Committee's consideration as it undertakes its study of this important bill.

Yours sincerely,



Deborah E. Palter
President

Attachments:

1. The Advocates' Society's Letter to The Honourable David Lametti, Minister of Justice and Attorney General of Canada, re: Bill C-5, *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*, dated January 6, 2022

CC: The Honourable David Lametti, P.C., M.P., Minister of Justice and Attorney General of Canada
Vicki White, Chief Executive Officer, The Advocates' Society

January 6, 2022

VIA EMAIL: mcu@justice.gc.ca

The Honourable David Lametti, P.C., M.P.
Minister of Justice and Attorney General of Canada
House of Commons
Ottawa ON K1A 0A6

Dear Minister:

RE: Bill C-5, *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*

The Advocates' Society (the "Society"), established in 1963, is a not-for-profit association of approximately 5,500 members throughout Canada. The Society's mandate includes making submissions to governments and others on matters that affect access to justice, the administration of justice, and the practice of law by advocates. The Society's membership includes advocates who practise criminal law, including both Crown prosecutors and members of the criminal defence bar.

The Society welcomed the re-introduction of Bill C-5, formerly Bill C-22, in the House of Commons on December 7, 2021. The Society strongly supports the government's objectives of reducing the significant overrepresentation of Indigenous peoples, Black Canadians, and members of other marginalized communities in the criminal justice system and in prisons. We also support the treatment of substance use as a health issue with the use of evidence-based measures. Bill C-5 contains a number of amendments that will help achieve these objectives. The Society welcomes the amendments proposed by Bill C-5, and believes that their passage into law will improve our criminal justice system.

However, the Society believes that the amendments should go farther in three important respects. First, the Society recommends that in addition to the mandatory minimum penalties that will be repealed by Bill C-5, the government consider repealing further mandatory minimum penalties that have been struck down as unconstitutional by courts across Canada. Second, the Society recommends that the availability of conditional sentence orders be further expanded to offences with mandatory minimum penalties. Third, the Society recommends that instead of granting police and prosecutors the discretion to divert individuals accused of simple drug possession away from the criminal justice system towards community programs, there are good social and public health reasons to consider decriminalizing simple drug possession.

I. Mandatory Minimum Penalties

The Society appreciates and supports the government's proposal to eliminate mandatory minimum penalties for fourteen offences in the *Criminal Code* ("*Code*") and all six offences in the *Controlled Drugs and Substances Act* ("*CDSA*").

Despite its commendable measures, Bill C-5 does not address several mandatory minimum penalties declared unconstitutional in particular Canadian jurisdictions, but which remain in place in others. The gap in the proposed legislation would require affected parties to continue to initiate costly and lengthy litigation over the constitutionality of mandatory minimums that have already failed to meet constitutional standards. This raises access to justice issues for the very same marginalized litigants that Bill C-5 is designed to protect. Second, it squanders scarce judicial resources. Third, disparities and inconsistencies in sentencing across the country undermine the rule of law.

The Society recommends that the government repeal all mandatory minimum penalties that the courts have found to be inconsistent with the *Canadian Charter of Rights and Freedoms* ("*Charter*"). Appendix A to this submission contains a detailed list of the *Code* provisions that carry mandatory minimum sentences that have been struck down as unconstitutional by Canadian courts, but are not included in Bill C-5.

Mandatory Minimum Sentences or Penalties

Mandatory minimum penalties derogate from the foundational sentencing principle that sentences should be proportionate to the offender's degree of responsibility and the seriousness of the offence, taking into account all aggravating and mitigating factors. By removing judicial discretion, mandatory minimum penalties prevent judges from tailoring sentences to achieve fair outcomes. In *R. v. Wust,* the Supreme Court of Canada described mandatory minimum sentences as exceptional and inconsistent with the principle of proportionality:

> Mandatory minimum sentences are not the norm in this country… [T]hey often detract from what Parliament has expressed as the fundamental principle of sentencing in s. 718.1 of the *Code*: the principle of proportionality.[1]

The extensive academic, judicial, and governmental study of mandatory minimum penalties has revealed several problems with mandatory minimums. Chief among these problems is the imposition of unjust sentences that have a disparate impact on Indigenous and racialized communities. In addition, mandatory minimum penalties do not effectively promote public safety and, in fact, increase the likelihood of recidivism. Mandatory minimum sentences shift discretion from reviewable judicial discretion to unreviewable Crown discretion. They also increase monetary and social costs.[2] The same concerns that animate Bill C-5 exist in the *Code* provisions that the courts have already struck down, but which are not included in Bill C-5. The courts have already subjected these mandatory minimums to scrutiny, and found them unconstitutional. Bill C-5 presents an opportunity to address these provisions.

Addressing the Patchwork of Cases Across the Country

The proliferation of mandatory minimum sentences brought about by the *Safe Streets and Communities Act*[3] and the *Protection of Communities and Exploited Persons Act*[4] resulted in increased *Charter*

[1] *R. v. Wust*, 2000 SCC 18, [2000] 1 S.C.R. 455.
[2] Raji Mangat, *More than We Can Afford: The Costs of Mandatory Minimum Sentencing*, British Columbia Civil Liberties Association; Janani Shanmuganathan, "R. v. Nur: A Positive Step but not the Solution to the Problem of Mandatory Minimums in Canada" (2016) 76:15 The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference.
[3] S.C. 2012, c. 1.
[4] S.C. 2014, c. 25, ss. 18-20.

challenges. As of December 3, 2021, the Department of Justice was tracking 217 constitutional challenges to mandatory minimum sentences. These challenges represent 34% of all *Charter* challenges to the *Code*.[5]

Charter challenges conducted in a piecemeal fashion have left a patchwork of case law across Canada. The chart in Appendix A shows the significant number of mandatory minimum sentences that the courts have struck down as unconstitutional; however, these rulings do not have national application. As shown in the appended chart, the judiciary has uniformly rejected some of the provisions. For example, in ten separate cases, courts in Ontario, Québec, and Alberta have struck down the three-year mandatory minimum sentence for a first offence of trafficking in a weapon.[6] The Supreme Court of Canada refused leave to appeal in *R. c. Lefrançois,* the one appellate-level decision dealing with that section.[7] The Supreme Court's refusal to grant leave ensures that individual offenders will receive different treatment depending on the province where they are located. This differential treatment is most efficiently addressed through legislative reform.

Requiring parties in criminal proceedings to conduct repetitive litigation unnecessarily consumes parties' and courts' time and resources. To invalidate a mandatory minimum, an individual must mount a section 12 *Charter* challenge to establish that the mandatory minimum sentence constitutes a cruel and unusual punishment for the offender or in a reasonable hypothetical. The sentence must be grossly disproportionate and so excessive as to outrage the standards of decency and be abhorrent or intolerable to society.[8] The most economically impoverished members of society bear this burden.

The demands of a section 12 constitutional challenge draw significant court resources away from other pressing issues. For example, *R. v. Nur* entered the justice system in 2009. The case finally concluded six years later in a judgment from the Supreme Court of Canada in 2015. In addition to the main parties in *Nur*, three attorneys general and ten public interest groups intervened at the Supreme Court (including the Society). Similarly, *R. v. Boudreault*, which involved a challenge to mandatory victim surcharges, took four years to complete its progress through the courts.[9]

In addition to the costs to the parties and the courts, allowing the disparate application of mandatory minimums undermines the fundamental principles of certainty and predictability. The erosion of the rule of law diminishes public trust. The judiciary is ill-suited to achieve uniformity in this area. Repealing the mandatory minimums is the most equitable and efficient means to address the disparate application of these sentencing provisions.

II. Conditional Sentence Orders

The Society supports Bill C-5's removal of restrictions on the availability of conditional sentence orders.[10]

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[5] Department of Justice, *Mandatory Minimum Penalties and the Courts*, online: Government of Canada, <https://www.canada.ca/en/department-justice/news/2021/12/mandatory-minimum-penalties-and-the-courts.html> .

[6] *Code*, s. 99(2)(a).

[7] *Attorney General of Quebec v. Lefrançois,* 2019 CanLII 53412 (CSC) (leave to appeal dismissed).

[8] *R. v. Smith,* [1987] 1 S.C.R. 1045 at 1072; *R. v. Nur*, 2015 SCC 15, [2015] 1 S.C.R. 773 at para. 39.

[9] 2018 SCC 58, [2018] 3 S.C.R. 599.

[10] Section 14 of Bill C-5, amending s. 742.1 of the *Code*.

Conditional sentence orders were introduced into the *Code* in 1996, by Bill C-41. In Minister of Justice Allan Rock's speech opening debate on Bill C-41, he stated that "A general principle that runs throughout Bill C-41 is that jails should be reserved for those who should be there. Alternatives should be put in place for those who commit offences but who do not need or merit incarceration."[11] One such alternative is the conditional sentence. For a conditional sentence to be available, the fit sentence must be less than two years, and the Court must be satisfied that serving the sentence in the community will not endanger the community and is consistent with the fundamental purpose and principles of sentencing.[12]

In *R. v. Proulx*, the Supreme Court of Canada described conditional sentences as follows:

> The conditional sentence is a meaningful alternative to incarceration for less serious and non-dangerous offenders. The offenders who meet the criteria of s. 742.1 will serve a sentence under strict surveillance in the community instead of going to prison. These offenders' liberty will be constrained by conditions to be attached to the sentence, as set out in s. 742.3 of the *Code*. In case of breach of conditions, the offender will be brought back before a judge, pursuant to s. 742.6. If an offender cannot provide a reasonable excuse for breaching the conditions of his or her sentence, the judge may order him or her to serve the remainder of the sentence in jail, as it was intended by Parliament that there be a real threat of incarceration to increase compliance with the conditions of the sentence.
>
> The conditional sentence incorporates some elements of non-custodial measures and some others of incarceration. Because it is served in the community, it will generally be more effective than incarceration at achieving the restorative objectives of rehabilitation, reparations to the victim and community, and the promotion of a sense of responsibility in the offender. However, it is also a punitive sanction capable of achieving the objectives of denunciation and deterrence.[13]

Conditional sentences orders are only appropriate when jail sentences would otherwise be imposed. They may carry lengthy and onerous conditions. *R. v. Proulx* warned that judges should not resort to conditional sentences when less intrusive sanctions are appropriate. As Lamer C.J. stated:

> Sentencing judges should always be mindful of the fact that conditional sentences are only to be imposed on offenders who would otherwise have been sent to jail. If the judge is of the opinion that punitive conditions are unnecessary, then probation, rather than a conditional sentence, is most likely the appropriate disposition.[14]

Although the Society supports expanding the availability of conditional sentence orders as proposed by Bill C-5, it remains the case that conditional sentences should only be imposed when incarceration is otherwise justified by the circumstances of the case and the offender, as the Supreme Court set out in *R. v. Proulx.* Sentencing data suggests that conditional sentences are often used in a manner that results in net-widening, where offenders are subject to onerous conditional sentence orders in circumstances in which a fine or a probation order would have been more appropriate.[15] In addition, conditional sentence orders attract breaches that disproportionately impact members of the Indigenous community:

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[11] Canada, Parliament, *House of Commons Debates*, 35th Parl, 1st Sess, Vol 133, No 93 (20 September 1994) at 5873, quoted in *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 20.
[12] *Code*, s. 742.1(a).
[13] *R. v. Proulx*, *supra*, at paras. 21-22 (emphasis in original removed).
[14] *Ibid.*, at para. 37.
[15] Editorial, "Conditional Sentences and Net Widening" (2000) 43:3 Crim LQ 273.

> Indigenous individuals tended to receive shorter [conditional sentence orders] compared to Caucasian individuals. However, Indigenous individuals were 35% more likely than Caucasian individuals to be convicted of a breach and more likely to incur multiple breaches while on a [conditional sentence order]. Despite the differences in the rates of breaches, the likelihood of reoffending over a two-year period was equivalent across the two groups.[16]

Bill C-5 proposes to remove restrictions on the availability of conditional sentences and thereby make such orders available for offenders convicted of offences punishable by a maximum of 14 years or life;[17] certain offences punishable by a maximum of 10 years;[18] and certain other types of offences prosecuted by way of indictment.[19] The Society supports moving away from tying the availability of conditional sentences to the type of offence and the *potential* length of a sentence that may be imposed for the offence. This will provide sentencing judges with the discretion necessary to consider the individual circumstances of the offence and the offender, including Gladue reports[20] and Impact of Race and Culture Assessments, and craft a fit sentence.

The Society suggests that a natural extension of Bill C-5's proposed amendments is to make conditional sentences available to offenders convicted of offences that carry mandatory minimums. Currently, section 742.1(b) of the *Code* prohibits a sentencing judge from ordering the offender to serve their sentence in the community when the offence is punishable by a minimum term of imprisonment. The Society suggests repealing section 742.1(b) so that, when appropriate, judges may order those convicted of offences carrying mandatory minimums to serve their sentence in the community. This expansion of judges' discretion to impose conditional sentences in appropriate cases is in line with the increased availability of conditional sentences envisaged by Bill C-5.

As noted above, expanding the availability of conditional sentences to crimes that carry mandatory minimum sentences would allow judges to order an offender to serve a minimum sentence in their community when appropriate. This is particularly important for very short sentences of imprisonment that are often imposed as intermittent sentences to allow offenders to maintain employment and other responsibilities in the community while serving their sentences.

Intermittent sentences are technically available for any sentence of imprisonment of 90 days or less;[21] however, serving a sentence intermittently is often impossible for offenders who live a great distance from the nearest correctional facility, such as Indigenous offenders who live in remote or fly-in communities. Allowing offenders convicted of crimes that carry short minimum sentences to serve those sentences in their communities when appropriate would allow them to retain employment and maintain the social supports necessary for rehabilitation.[22]

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[16] Leticia Gutierrez and Nick Chadwick, "Are Conditional Sentence Orders Used Differently for Indigenous Offenders? A Comparison of Sentences and Outcomes in Canada" (2020) Canadian J. Criminology & Crim. Just. 1.

[17] By means of the amendment to s. 742.1(c) of the *Code*.

[18] By means of the repeal of s. 742.1(e) of the *Code*.

[19] By means of the repeal of s. 742.1(f) of the *Code*.

[20] See s. 718.2(e) of the *Code*, which requires a court imposing sentence to consider all reasonable sanctions in the circumstances other than imprisonment, "with particular attention to the circumstances of Aboriginal offenders"; *R. v. Gladue*, [1999] 1 S.C.R. 688; *R. v. Ipelee*, 2012 SCC 13, [2012] 1 S.C.R. 433.

[21] *Code*, s. 732(1).

[22] See e.g. *R. v. Turtle*, 2020 ONCJ 429. In *Turtle*, the Court found that the offenders' s. 15 *Charter* right to equal protection and equal benefit of the law was violated because they were practically foreclosed from serving their

To ensure that this meaningful alternative to incarceration is available to judges when appropriate, the Society recommends that section 742.1(b) of the *Code* be repealed.

III. Diversion of Simple Drug Possession

The Society supports the government's goal of treating simple drug possession as a public health and social issue, rather than a criminal justice issue. The Society further agrees with the principles set out in the proposed section 10.1 of the *CDSA*.

The Society is concerned, however, that the practical impact of the amendments to the *CDSA* to emphasize diversion measures for simple possession will be diminished by their optional character.

Recent history shows that suggestions to criminal justice system participants rarely change long-standing practices. For example, since September 2019, the *Code* has included the option of dealing with relatively minor bail breaches through judicial referral hearings that are designed to reduce the number of administration of justice offences clogging the court system. Unfortunately, this optional tool is rarely being offered or used; indeed, as of March 2021, some provinces had yet to implement the required procedures to allow judicial referral hearings to happen or did not plan to do so.[23] If the government is committed to changing from a criminal justice to a public health-based approach to problematic drug use, it should not leave acting on that change to the discretion of police officers and prosecutors.

Moreover, Bill C-5's aim of addressing the problematic use of drugs as a public health and social issue through evidence-based best practices is undermined by the continued criminalization of the simple possession of controlled substances. As such, the Society recommends that the government consider decriminalizing the simple possession of all drugs for personal use by repealing section 4(1) of the *Controlled Drugs and Substances Act*. It should be noted that decriminalizing the possession of drugs for personal use would not legalize the trade in these substances: the production of a prohibited substance, trafficking, and the possession of a prohibited substance for the purpose of trafficking would all remain serious offences subject to criminal prosecution under the *CDSA*.

A broad spectrum of frontline organizations dealing with the public health and social harms of problematic drug use support the decriminalization of simple drug possession. In July 2018, Toronto Public Health recommended the decriminalization of simple drug possession and a re-focussing of resources on prevention, harm reduction and treatment.[24] The British Columbia Office of the Provincial Health Officer endorsed decriminalization of simple possession and recommended that the provincial government limit the enforcement of section 4(1) of the *CDSA*.[25] In July 2020, the Vancouver Police Board endorsed the decriminalization of the personal possession of drugs.[26] In the same month, the Canadian Association of Chiefs of Police "agree[d] that evidence suggests, and numerous Canadian health leaders support,

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mandatory minimum sentences intermittently, due to the distance between their homes in Pikangikum First Nation Territory and Kenora District Jail.

[23] Justin Ling, "Reform but no follow-through," *CBA National Magazine,* March 11, 2021.

[24] "Toronto Public Heath releases outcome of drug policy consultation," News Release, City of Toronto, July 9, 2018.

[25] British Columbia Office of the Provincial Health Officer, *Stopping the Harm: Decriminalization of People Who Use Drugs in BC*, Provincial Health Officer's Special Report, p. 37.

[26] "Vancouver Police Board's Statement on Decriminalization of the Simple Possession of Illicit Drugs," Vancouver Police Board, July 10, 2020.

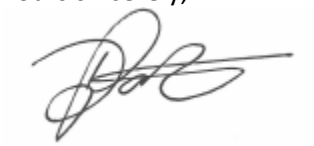
decriminalization for simple possession as an effective way to reduce the public health and public safety harms associated with substance use."[27] There is an emerging broad consensus that the criminal justice system is ill-suited to delivering the health services and social supports necessary to reduce the harm from drug use. We should no longer ask it to.

Decriminalizing the simple possession of drugs would also focus the criminal justice system's scarce resources on prosecuting the offences that cause the most harm to the public (such as trafficking), instead of prosecuting individual users, who are more often victims of the drug trade themselves and better rehabilitated via public health measures. For example, between July 2020 and June 2021, the Ontario Court of Justice disposed of 8,603 drug possession cases, approximately 4.75% of all cases disposed of; of those, 7,297 were withdrawn or stayed before trial and a further 137 were withdrawn at trial (approximately 86%). These cases averaged 158 days and 4.4 appearances for disposition.[28] Drug possession cases appear to be taking up significant court resources that, given the rate of withdrawal of these cases, could be better used elsewhere in the administration of justice.

Repealing the criminal prohibition on simple possession also advances Bill C-5's goal of reducing the over-policing of racialized and marginalized communities. The Society supports Bill C-5's repeal of mandatory minimum sentences for drug offences and increased emphasis on diversion. However, these changes to the law mostly affect the points at which people exit from the criminal justice system. Much of the burden and friction between marginalized communities and the police occurs earlier in the process. Maintaining a criminal prohibition on simple drug possession allows for investigative detentions, searches, arrests and needless entanglement in the criminal justice system even if the end result is a diversion agreement rather than a criminal conviction. Simple possession charges also risk acting as gateways into the criminal justice system with their harm compounded by additional administration of justice offences as people with complicated, unstable lives are required to navigate the court system. A person originally charged with simple drug possession may soon find themselves facing additional charges for bail violations and failing to attend court, all of which are a result of the same underlying social issues. Reconciliation with racialized and marginalized communities is better served by limiting experiences with and within the criminal justice system rather than just softening the end result.

Thank you for providing the Society with the opportunity to make these submissions. I would be pleased to discuss these submissions with you at your convenience.

Yours sincerely,



Deborah E. Palter
President

CC: Vicki White, Chief Executive Officer, The Advocates' Society

[27] Canadian Association of Chiefs of Police Special Purpose Committee on the Decriminalization of Illicit Drugs, Findings and Recommendations Report, *Decriminalization for Simple Possession of Illicit Drugs: Exploring Impacts on Public Safety & Policing*, July 2020, p. 2.
[28] Ontario Court of Justice, Criminal Court Statistics, 2021 Offence Based Statistics for All Criminal Cases.

Attachments:

1. Appendix A, Chart of Mandatory Minimum Sentences Struck Down as Unconstitutional by Canadian Superior Courts and Courts of Appeal

The Advocates' Society's Task Force on Bill C-5:

David D. Conklin, *Goodmans LLP*
James Foy, *Savard Foy LLP*
Scott C. Hutchison, *Henein Hutchison LLP*
Najma Jamaldin, *Barrister & Solicitor*
Anthony Moustacalis, *Anthony Moustacalis & Associate* (chair)
William Thompson, *Addario Law Group*

Appendix A
Chart of Mandatory Minimum Sentences Struck Down as Unconstitutional by Canadian Superior Courts and Courts of Appeal

Below please find a chart of mandatory minimum sentences struck down as unconstitutional by Superior Courts and Courts of Appeal across the country and not included in Bill C-5.[29] This list may not be comprehensive.

Firearms and Other Weapons Offences

Offence	Section	MMS	Provinces/Territories Struck Down	Citations
Weapons trafficking, first offence	s. 99(2)(a) *Criminal Code*	3 years	AB, ON, QC	*R v Friesen*, 2015 ABQB 717 *R v Bajwa*, 2020 ONSC 185 *R v Ball*, 2019 ONSC 7162 *R v Bruce*, 2019 ONSC 5865 *R v Wetelainen*, 2019 ONSC 869 *R v De Vos*, 2018 ONSC 6813 *R v Sauve*, 2018 ONSC 7375 *R v Harriott*, 2017 ONSC 3393 *R v Hussain*, 2015 ONSC 7115 *R c Lefrançois*, 2018 QCCA 1793, leave to appeal dismissed, 2019 CanLII 53412 (SCC)
Importing weapons, first offence	s. 103(2)(a) *Criminal Code*	3 years	QC	*R c Lefrançois*, 2018 QCCA 1793, leave to appeal dismissed, 2019 CanLII 53412 (SCC)

[29] This chart was produced with thanks to the data compiled by Matthew Oleynik and mms.watch.

Sexual Offences

Offence	Section	MMS	Provinces/Territories Struck Down	Citations
Sexual interference – summary	s. 151(b) *Criminal Code*	90 days	ON	*R v Drumonde*, 2019 ONSC 1005
Sexual interference – indictable	s. 151(a) *Criminal Code*	1 year	AB, BC, MB, NS, ON, QC	*R v Ford*, 2019 ABCA 87 *R v Scofield*, 2019 BCCA 3 *R v JED*, 2018 MBCA 123 *R v Hood*, 2018 NSCA 18 *R v WG*, 2019 ONSC 1146 *Caron Barrette c R*, 2018 QCCA 516
Inviting sexual touching – indictable	s. 152(a) *Criminal Code*	1 year	AB, ON	*R v Reeves*, 2020 ABQB 78 *R v Hussein*, 2017 ONSC 4202
Sexual exploitation	s. 153(1.1)(a) *Criminal Code*	1 year	BC, NS, ON, YK[30]	*R v DM,* 2021 BCSC 379 *R v Hood,* 2018 NSCA 18 *R v Cristoferi-Paolucci,* 2017 ONSC 4246, proceedings stayed 2018 ONCA 986 *R v EO,* 2019 YKCA 9, leave to appeal denied 2019 CanLII 112796 (SCC)
Making child pornography	s. 163.1(2) *Criminal Code*	1 year	AB, ON	*R v Esposito,* 2020 ABQB 165 *R v Joseph*, 2020 ONCA 733

[30] Two decisions have upheld the 1-year mandatory minimum: *R v EJB*, 2018 ABCA 239, leave to appeal denied 2019 CanLII 45254 (SCC); *R v Reid*, 2020 ONSC 5471.

Distributing child pornography	s. 163.1(3) *Criminal Code*	1 year	BC, ON[31]	*R v Mollon*, 2019 BCSC 423 *R v Boodhoo and others*, 2018 ONSC 7207 *R v Walker*, 2021 ONSC 837
Possessing child pornography – summary	s. 163.1(4)(b) *Criminal Code*	6 months	BC	*R v Cole*, 2021 BCSC 293
Possessing child pornography – indictable	s. 163.1(4)(a) *Criminal Code*	1 year	AB, BC, ON, PE	*R v Brittain* (4 Dec 2018), Calgary, Alta, docket 151535455Q1 (ABQB), per Mah J *R v Hamlin*, 2019 BCSC 2266 *R v Walker*, 2021 ONSC 837 *R v Jenkins*, 2021 PESC 6
Accessing child pornography – summary	s. 163.1(4.1)(b) *Criminal Code*	6 months	ON	*R v Doucette*, 2021 ONSC 371
Accessing child pornography – indictable	s. 163.1(4.1)(a) *Criminal Code*	1 year	BC, ON	*R v Hamlin*, 2019 BCSC 2266 *R v Walker*, 2021 ONSC 837
Child luring – summary	s. 172.1(2)(b) *Criminal Code*	6 months	QC	*R c HV*, 2021 QCCS 837
Child luring – indictable	s. 172.1(2)(a) *Criminal Code*	1 year	AB, BC, NS[32]	*R v Jissink*, 2021 ABQB 102 *R v Melrose*, 2021 ABQB 73 *R v BS*, 2018 BCSC 2044 *R v Hood*, 2018 NSCA 18
Agreeing to or arranging sexual offence against a child	s. 172.2(2)(a) *Criminal Code*	1 year	ON	*R v CDR*, 2020 ONSC 645, but see *R v Wheeler*, 2017 CanLII 86656

[31] The 1-year mandatory minimum has been upheld in Quebec and Alberta: *Ibrahim c R*, 2018 QCCA 1205; *R v Schultz*, 2008 ABQB 679.

[32] The 1-year mandatory minimum has been upheld in Ontario in a 2:1 decision of the Court of Appeal: *R v Cowell*, 2019 ONCA 972.

Offences Against the Person

Offence	Section	MMS	Provinces/Territories Struck Down	Citations
Sexual assault against child under 16 – indictable	s. 271(a) *Criminal Code*	1 year	BC, NS, NWT, YK	*R v Plehanov*, 2017 BCSC 2176 *R v ERDR*, 2016 BCSC 684 and 2016 BCSC 1759 *R v MacLean*, 2018 NLSC 209 *R v Lafferty*, 2020 NWTSC 4 *R v YH*, 2019 YKSC 28
Sexual assault with weapon, threats or bodily harm against child under 16	s. 272(2)(a.2) *Criminal Code*	5 years	AB, ON, QC	*R v Badger*, 2019 ABQB 551 *R v MJ*, 2016 ONSC 2769 *R c Trottier*, 2020 QCCA 703
Human trafficking	s. 279.01(1)(b) *Criminal Code*	4 years	ON	*R v Antoine*, 2020 ONSC 181 *R v Reginald Louis Jean*, 2020 ONSC 624
Human trafficking of child under 18	s. 279.011(1)(b) *Criminal Code*	5 years	NS, ON	*R v Webber*, 2019 NSSC 147 and 2019 NSSC 265 *R v Ahmed et al*, 2019 ONSC 4822
Obtaining material benefit from child trafficking	s. 279.02(2) *Criminal Code*	2 years	NS	*R v Webber*, 2019 NSSC 147 and 2019 NSSC 265
Purchasing sex from child under 18, first offence	s. 286.1(2)(a) *Criminal Code*	6 months	AB, BC, ON[33]	*R v Charboneau*, 2019 ABQB 882 *R v JLM*, 2017 BCCA 258, leave to appeal denied 2018 CanLII 14529 (SCC) *R v CDR*, 2020 ONSC 645

[33] The six-month mandatory minimum has been upheld in Quebec: *R c CM*, 2021 QCCA 543.

Obtaining material benefit from child prostitution	s. 286.2(2) *Criminal Code*	2 years	ON	*R v Joseph*, 2020 ONCA 733
Procuring child under 18 for prostitution	s. 286.3(2) *Criminal Code*	5 years	ON	*R v JG*, 2021 ONSC 1095 *R v Boodhoo and others*, 2018 ONSC 7207 *R v Safieh*, 2018 ONSC 4468
Recklessly discharge firearm, with restricted or prohibited weapon, or for the benefit of or at the direction of or in association with a criminal organization, first offence	s. 244.2(3)(a)(i) *Criminal Code*	5 years	BC, NWT	*R v Dingwall*, 2018 BCSC 1041 *R v Cardinal*, 2018 NWTSC 12