

“Justice, Safety and Autonomy for Women: Proposed Amendments to Bill S-12 Regarding Publication Bans”

A brief on Bill S-12, An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act

June 6, 2023

Submitted to the Senate’s Standing Committee on Legal and
Constitutional Affairs by

The National Association of Women and the Law (NAWL)

Women’s Legal Education and Action Fund (LEAF)

Ending Violence Association of Canada (EVA)

Canadian Association of Elizabeth Fry Societies (CAEFS)

Legal Advocates Against Sexual Violence (LASV)

Possibility Seeds

Robin Parker

Pamela Cross

Megan Stephens

About this brief

This brief is the result of a collaboration between feminist organizations working to achieve substantive equality for women through law reform work and feminist lawyers with concrete experience defending and representing survivors.

While we support the intention behind Bill S-12 of improving the process that victims/survivors face when they want to have an unwanted publication ban on their identity removed, we believe much work remains to be done for this Bill to truly protect access to justice, safety, and autonomy for survivors of sexual violence, who are disproportionately women.

We make 5 concrete recommendations for amendments to the Bill:

- 1) Ensure victims are not criminalized for failing to comply with a publication ban on their own identity
- 2) Ensure limited exemptions for circumstances where failing to comply with the publication ban is not intended to make the information known in the community
- 3) Remove “Otherwise made available” language
- 4) Clarify and simplify the process for revoking or varying a publication ban
- 5) Ensure victims are informed

We include at the end of this document a list of all proposed amendments in numerical order.

Contents

Context	3
Proposed amendments	4
Recommendation #1: Ensure victims are not criminalized for failing to comply with a publication ban on their own identity	4
Recommendation #2: Ensure limited exemptions for circumstances where failing to comply with the publication ban is not intended to make the information known in the community	6
Recommendation #3: Remove “Otherwise made available” language	6
Recommendation #4: Clarify and simplify the process for revoking or varying a publication ban	7
Recommendation #5: Ensure victims are informed	9
Annex 1: List of proposed amendments to the Bill, in order	12
Annex 2: About the Signatories to this Submission	17

Context

There is a dire need for more trauma-informed, survivor-centered processes within the criminal justice system. Sexual assault is amongst the most underreported crimes in Canada, with only [5% of sexual assaults reported to the police](#). It is [well-documented that sexual violence survivors often receive significant negative reactions](#) that are re-victimizing, such as victim-blaming, if they do have contact with these systems. Stigma and discrimination while navigating the justice systems is especially pronounced for sexual violence survivors who are members of [historically marginalized groups who are over-scrutinized and over-incarcerated](#), leading to [significant distrust in the criminal justice system](#).

Sexual violence survivors who do engage with the criminal justice system face years-long wait times for trials. As witnesses to the crime committed against them, they are subjected to grueling cross-examinations that question their legitimacy, and proceedings that feel unsafe and re-victimizing, with little say on the process or outcome, and [low conviction rates](#). Bill S-12 and its focus on publication bans highlights another mechanism through which victim-complainants who engage with the criminal justice system may face challenges.

Publication bans are an important mechanism to protect the identity and privacy of victim-complainants, but when they are unwanted, they can be harmful to survivors and act to further silence them. The complex and unclear process to remove a ban can be arduous, costly, and retraumatizing. Criminal consequences for survivors breaching a ban on their own identity can be harsh and disproportionate. In our view, survivors of sexualized violence should never be criminalized for breaching a publication ban on their own identity.

In this context, any changes to existing *Criminal Code* legislation should take into consideration the gendered nature of sexualized violence and reflect the intention behind publication bans – that of preventing further harm to survivors.

For these reasons, we are recommending the following amendments to Bill S-12 as it relates to publication bans to protect against potential unintended consequences.

In addition to these amendments, we urge the Committee to recognize that changes to the *Criminal Code* that concern issues such as sexual assault, intimate partner violence, and other forms of gender-based violence must be accompanied with adequate resourcing to ensure their implementation happens in the way it is intended.

In the context of Bill S-12, this means also recognizing how publication bans are interconnected with a number of other avenues that are also key to creating more trauma-informed, survivor-centred processes within the justice system. Some of these include:

- free, independent legal advice;
- ongoing training and education on sexual assault for those within the justice system;
- improvements in the handling of and transparency about sexual assault investigations by police; and
- adequate resourcing for organizations that support survivors so that survivors can access counselling and other services they may need.

Proposed amendments

Proposed additions are in red; ~~proposed deletions are in strikethrough~~, and text in black is existing text in the Bill and/or the *Criminal Code*. All amendments relate to the *Criminal Code*.

The proposed amendments address publication bans ordered under sections 486.4 and 486.5, as well as publication bans ordered by Review Boards when an accused has been found to be not criminally responsible due to mental illness.

Recommendation #1: Ensure victims are not criminalized for failing to comply with a publication ban on their own identity

Explanation: This proposed amendment ensures a victim is not prosecuted for failing to comply with a publication ban on any information that could identify them, including their own name. This is essential because:

- many survivors don't even know that there is a publication ban in place;
- survivors report experiencing as re-victimization the fact of being threatened with criminal sanctions if they share their story;
- while respect for publication bans is an important value, criminal punishment is not the appropriate response;
- publication bans may be so broad as to prohibit (and/or seem to prohibit) a victim from sharing her story with her support group or therapist, which creates obstacles to recovery.

While a narrower exemption is proposed in Recommendation #2 to address the situation where disclosure by one victim may lead to another victim's identity being disclosed, a qualified exemption may be difficult to understand without legal advice. Therefore, at least when there are no other victim's or witness's interests at stake, threat of criminal liability should not be used against survivors of sexual violence. Note that the threat of criminal liability may be weaponized by an accused against a victim (e.g., in the context of a survivor with precarious immigration status, "if you talk about what happened within our community, I will call the police and you will be deported").

The proposed immunity should not be controversial as it does not detract from other goals, such as limiting the dissemination of information and protecting co-victims. Indeed, it is important to understand that the proposed immunity **does not extend to the media**. This means that protection of sensitive information is still achieved: the victim can speak freely, but others, including the media, cannot disseminate the identifying information further until a publication ban is revoked. Moreover, the immunity only applies when the disclosure does not result in the identification of another victim or witness whose identity is also protected. Thus, **this immunity would enable a victim to speak up about her experience without losing all the protection of a publication ban** (e.g. she wants to speak about her experience at a conference, at a demonstration, with a support group, in a Facebook group, etc., but does not want her identity or name reported by the media).

The proposed immunity is inspired by existing examples in the law. The immunity granted under the *Youth Criminal Justice Act*, section 100(3) allows a young person who turns eighteen to “publish or cause to be published information that would identify him or her as having been dealt with under this Act or the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985, provided that he or she is not in custody pursuant to either Act at the time of the publication.” Moreover, an Australian law (Judicial Proceedings Reports Act 1958 (Vic)) includes immunity for “a victim of an alleged offence or an offence who publishes any matter that contains any particulars likely to identify that victim”.

Add section 4.1 to the Bill to amend section 486.6 of the *Criminal Code*

Current version:

Offence

486.6 (1) Every person who fails to comply with an order made under any of subsections 486.4(1) to (3) or subsection 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

Application of order

(2) For greater certainty, an order referred to in subsection (1) applies to prohibit, in relation to proceedings taken against any person who fails to comply with the order, the publication in any document or the broadcasting or transmission in any way of information that could identify a victim, witness or justice system participant whose identity is protected by the order.

Amendment:

4.1 Section 486.6 of the Act is amended by adding the following after subsection (2):

(3) Subsection (1) does not apply in respect of a failure to comply with an order where:

- a) The person’s identity is protected by the order with which they have failed to comply; and,**
- b) The person did not, knowingly or recklessly, reveal the identity of, or reveal particulars likely to identify, any other person whose identity is protected by that order.**

Add section 32.3 to the Bill to amend section 672.501 of the *Criminal Code* (orders by Review Boards)

32.3 Section 672.501 of the Act is amended by adding the following after subsection (11):

(11.1) Subsection (11) does not apply in respect of a failure to comply with an order where:

- a) The person’s identity is protected by the order with which they have failed to comply; and,**
- b) The person did not, knowingly or recklessly, reveal the identity of, or reveal particulars likely to identify, any other person whose identity is protected by that order.**

Recommendation #2: Ensure limited exemptions for circumstances where failing to comply with the publication ban is not intended to make the information known in the community

Explanation: This amendment reflects the current state of the law, but is proposed for clarification purposes. It is all the more necessary if “otherwise made available” is not removed to avoid the unintended criminalization of victims. This change ensures that people whose identity is protected by a publication ban can still disclose their identity when the purpose is not to disseminate the information in the community (e.g. when talking to a therapist or support group, seeking accommodation at work, etc.). This exemption is more limited than the one proposed above as it does not cover all types of disclosures, but it would include disclosures that may reveal the identities of other victims or witnesses. Parliament recently passed Bill S-206, which allows jurors to disclose information about jury proceedings for the purpose of seeking therapy and counselling, and a similar level of compassion should be extended to victims of crime.

Amend section 2 of the Bill to amend section 486.4 of the *Criminal Code*

2 (4.1) Subsection 486.4(4) of the Act is replaced by the following:

(4) An order made under this section does not apply in respect of the disclosure of information **made by a person whose identity is protected by the order, or to the disclosure of information made** in the course of the administration of justice, when it is not the purpose of the disclosure to make the information known in the community.

Amend section 3 of the Bill to amend section 486.5 of the *Criminal Code*

3 (1.1) Subsection 486.5(3) of the Act is replaced by the following:

An order made under this section does not apply in respect of the disclosure of information **made by a person whose identity is protected by the order, or to the disclosure of information made** in the course of the administration of justice, when it is not the purpose of the disclosure to make the information known in the community.

Add section 32.2 to the Bill to amend section 672.501 of the *Criminal Code* (orders by Review Boards)

32.2 Subsection 672.501(4) of the Act is replaced by the following:

(4) An order made under any of subsections (1) to (3) does not apply in respect of the disclosure of information **made by a person whose identity is protected by the order, or to the disclosure of information made** in the course of the administration of justice if it is not the purpose of the disclosure to make the information known in the community.

Recommendation #3: Remove “Otherwise made available” language

Explanation: Bill S-12 proposes to expand the scope of publication bans by prohibiting “otherwise making available” identifying information. The additional language of “otherwise

made available” is too vague and overly broad to be meaningfully applied, and risks being subject to constitutional scrutiny. We recommend removing this addition in the following sections:

- Section 2(1) and 2(3) of the Bill (subsections 486.4(1) and (2.1) of the *Criminal Code*)
- Section 3(1) of the Bill (subsections 486.5(1) and (2) of the *Criminal Code*)
- Section 3(2) of the Bill (subsection 486.5(9) of the *Criminal Code*)
- Section 5 of the Bill (subsection 486(2) of the *Criminal Code*)

Recommendation #4: Clarify and simplify the process for revoking or varying a publication ban

Explanation: A judge should not have the discretion to refuse to revoke or vary a publication ban when a complainant requests it, or where a prosecutor is making that request on behalf of that complainant. The only exception should be in a case where the ban protects the identity of more than one complainant and where lifting the ban for one complainant could reveal the identity of another, in which case a hearing should be held to determine how the ban might be modified or revoked.

Generally, a formal hearing should not be required to revoke or vary a publication ban, except in limited circumstances. Survivors should not bear the high financial and emotional costs for what should be a simple and straightforward process.

The existence of the publication ban means that the court retains jurisdiction to deal with it, even after the trial is complete.

Finally, the bill must clarify that the accused has no standing at any hearing held in response to an application to vary or lift a publication ban. However, where a publication ban is varied or lifted, a prosecutor should be required to take reasonable steps to inform the accused or formerly accused person of the variation or revocation (as this will impact their ability to speak publicly).

Amend section 4 of the Bill to amend section 486.5 of the *Criminal Code*

4 The Act is amended by adding the following after section 486.5:

Hearing **Variation or revocation**

486.51 (1) A court that makes an order under section 486.4 or 486.5 or, if the court is for any reason unable to act, another court of equivalent jurisdiction in the same province, ~~must~~ ~~may~~ ~~and~~, on application of the victim, **the witness whose identity is protected by an order, a prosecutor acting with a victim or a witness’s consent, or another person representing a victim’s or witness’s interests,** ~~must~~ **vary or revoke the order as requested, unless**

(a) the person whose identity is protected and regarding which the variation or revocation is sought is unable to express their wishes; or

(b) the order to be varied or revoked protects the identity of more than one person and the revocation or variation would reveal the identity of an individual who wishes their identity to be protected—~~hold a hearing to determine whether the order should be varied or revoked.~~

Order protecting the identity of more than one person

(2) If the order protects the identities of more than one person, the court shall determine whether the order should be varied or revoked by balancing the interests of the people whose identities are protected and determining whether the order can be varied in a way that would protect the interests of all of them.

Victim or witness unable to express their wishes

(3) If the variation or revocation is sought with regard to a victim or witness who is unable to express their wishes, the court shall consider whether the variation or revocation is in the interests of justice, excluding any consideration of the interest of the accused or the person who was the accused.

Jurisdiction

(4) A hearing to determine whether to vary or revoke an order may take place at any time, including after the completion of the court proceedings, if it is necessary to determine whether an order should be varied or revoked.

Standing

(5) If a hearing is held, the court may hear from the victim or witness seeking to vary or revoke the order, the prosecutor, or any other victim or witness whose identity is protected by an order. The accused or person who was accused has no standing at the hearing and does not require notice of the application prior to any hearing.

Accused

(6) If the order is varied or revoked, the court shall order the prosecutor to take all reasonable steps to inform the accused or the person who was the accused, as soon as feasible, that the order has been varied or revoked.

Add new section 32.4 to the Bill to amend section 672.501 of the *Criminal Code* (Review Boards)

32.4 Section 672.501 of the Act is amended by adding the following after subsection (11.1)

Varying or revoking of order

(11.2) (1) A Review Board that makes an order under this section must, on application of the victim, a witness whose identity is protected by an order, or another person representing a victim's or witness's interests, vary or revoke the order as requested by the victim, witness or prosecutor, unless

(a) the person whose identity is protected and regarding which the variation or revocation is sought is unable to express their wishes; or

(b) the order to be varied or revoked protects the identity of more than one person and the revocation or variation would reveal the identity of an individual who wishes their identity to be protected.

Order protecting the identity of more than one person

(2) If the order protects the identities of more than one person, the Review Board shall determine whether the order should be varied or revoked by balancing the interests of the people whose identities are protected and determining whether the order can be varied in a way that would protect the interests of all of them.

Victim or witness unable to express their wishes

(3) If the variation or revocation is sought with regard to a victim or witness who is unable to express their wishes, the Review Board shall consider whether the variation or revocation is in the interests of justice, excluding any consideration of the interest of the accused or the person who was the accused.

Hearing

(4) A hearing to determine whether to vary or revoke an order may take place at any time, if it is necessary to determine whether an order should be varied or revoked. The person found not criminally responsible has no standing at the hearing and does not require notice of the application prior to any hearing.

Variation or revocation

(5) If the order is varied or revoked, the Review Board shall take all reasonable steps to inform the person found not criminally responsible, as soon as feasible, that the order has been varied or revoked.

Recommendation #5: Ensure victims are informed

Explanation: The burden to remain informed should not fall on the complainant. There must be multiple avenues through which judges and the criminal legal system ensure individuals most directly impacted by the publication ban are made aware of its existence and that they can apply to have it removed. Where a publication ban is imposed at the Crown's request, the order imposing the ban should include a requirement that the order be delivered to those whose identities are covered by the ban. Judges should be instructed to ask the complainant – at every stage of the criminal process – whether they know there is a publication ban in place, and if so, whether they want it to continue. Judges should have an obligation to inform complainants they can apply to vary or lift a publication ban at a future date.

Amend section 2 of the Bill to add subsection 486.4(5) to the *Criminal Code*

2 (4.2) Section 486.4 is amended by adding the following after subsection (4):

Duty of the Court

(5) If an order made under this section is in place, the presiding judge or justice shall, at every proceeding in which the victim or the person whose identity is protected by the order is present,

(a) inform this victim or person of the existence of the order, and that they can apply to vary or revoke it;

(b) ask the victim or person whether they wish for the publication ban to be varied or revoked, in which case the presiding judge or justice shall either vary or revoke the order, or hold a hearing to determine whether the order should be varied or revoked.

Add section 3 of the Bill to amend section 486.5 of the *Criminal Code*

3 (3) Section 486.5 is amended by adding the following after subsection (9):

Duty of the Court

(10) If an order made under this section is in place, the presiding judge or justice shall, at every proceeding in which the victim or the person whose identity is protected by the order is present,

(a) inform this victim or person of the existence of the order, and that they can apply to vary or revoke it;

(b) ask the victim or person whether they wish for the publication ban to be varied or revoked, in which case the presiding judge or justice shall either vary or revoke the order, or hold a hearing to determine whether the order should be varied or revoked.

Amend section 2(4) of the Bill to add sections 486.4(3.1) and (3.2) to the *Criminal Code*

2 (4) Section 486.4 of the Act is amended by adding the following after subsection (3):

Inquiry by court and duty of prosecutor

(3.1) If the prosecutor makes an application for an order under paragraph (2)(b) or (2.2)(b), the presiding judge or justice shall inquire of the prosecutor if reasonable steps were taken, before the application was made, to **obtain the consent of ~~consult~~ **the victim or witness whose identity would be protected** with respect to the application.**

(3.2) If the order is made at the request of the prosecutor prior to obtaining the consent of the victim or witness, the presiding judge or justice shall direct the prosecutor, and the prosecutor shall undertake, to

a) inform the victim or witness that the publication ban has been imposed and inform them of its scope and the consequences of failing to comply;

b) inform the victim that they have the right to apply to vary or revoke the order;

c) promptly make an application to vary or revoke the order, if requested by the victim.

(3.3) The prosecutor shall, at every significant stage of the criminal proceedings, ensure the victim knows

a) that a publication ban is in place, its scope and the consequences of failing to comply;

b) that they have the right to apply to vary or revoke the order;

c) that the prosecutor will make an application to vary or revoke the order, if requested by the victim.

Add section 32.1 to the Bill to amend section 672.501 of the Criminal Code (orders by Review Boards)

32.1 Section 672.501 of the Act is amended by adding the following after subsection (3)

Information

(3.1) Where a Review Board makes an order directing that any information that could identify a victim or a witness shall not be published in any document or broadcast or transmitted in any way, the Review Board must promptly inform the person whose identity is protected by the order of the existence of the order, its requirements and the consequences of failing to comply, and the possibility of and process for revoking or varying the order.

Annex 1: List of proposed amendments to the Bill, in order

This list excludes the proposed removal of “or otherwise made available” in subsections 2(1), 2(3), 3(1), 3(2) and 5 of the Bill.

.....

2 (4) Section 486.4 of the Act is amended by adding the following after subsection (3):

Inquiry by court and duty of the prosecutor

(3.1) If the prosecutor makes an application for an order under paragraph (2)(b) or (2.2)(b), the presiding judge or justice shall inquire of the prosecutor if reasonable steps were taken, before the application was made, to **obtain the consent of** ~~consult~~ **the victim or witness whose identity would be protected** with respect to the application.

(3.2) **If the order is made at the request of the prosecutor prior to obtaining the consent of the victim or witness, the presiding judge or justice shall direct the prosecutor, and the prosecutor shall undertake, to**

a) inform the victim or witness that the publication ban has been imposed and inform them of its scope and the consequences of failing to comply;

b) inform the victim that they have the right to apply to vary or revoke the order;

c) promptly make an application to vary or revoke the order, if requested by the victim.

(3.3) **The prosecutor shall, at every significant stage of the criminal proceedings, ensure the victim knows**

a) that a publication ban is in place, its scope and the consequences of failing to comply;

b) that they have the right to apply to vary or revoke the order;

c) that the prosecutor will make an application to vary or revoke the order, if requested by the victim.

.....

2 (4.1) Subsection 486.4(4) of the Act is replaced by the following:

(4) An order made under this section does not apply in respect of the disclosure of information **made by a person whose identity is protected by the order, or to the disclosure of information made** in the course of the administration of justice, when it is not the purpose of the disclosure to make the information known in the community.

.....

2 (4.2) Section 486.4 is amended by adding the following after subsection (4):

Duty of the Court

(5) **If an order made under this section is in place, the presiding judge or justice shall, at every proceeding in which the victim or the person whose identity is protected by the order is present,**

(a) inform this victim or person of the existence of the order, and that they can apply to vary or revoke it;

(b) ask the victim or person whether they wish for the publication ban to be varied or revoked, in which case the presiding judge or justice shall either vary or revoke the order, or hold a hearing to determine whether the order should be varied or revoked.

3 (1.1) Subsection 486.5(3) of the Act is replaced by the following:

An order made under this section does not apply in respect of the disclosure of information **made by a person whose identity is protected by the order, or to the disclosure of information made** in the course of the administration of justice, when it is not the purpose of the disclosure to make the information known in the community.

3 (3) Section 486.5 is amended by adding the following after subsection (9):

Duty of the Court

(10) If an order made under this section is in place, the presiding judge or justice shall, at every proceeding in which the victim or the person whose identity is protected by the order is present,

(a) inform this victim or person of the existence of the order, and that they can apply to vary or revoke it;

(b) ask the victim or person whether they wish for the publication ban to be varied or revoked, in which case the presiding judge or justice shall either vary or revoke the order, or hold a hearing to determine whether the order should be varied or revoked.

4 The Act is amended by adding the following after section 486.5:

Hearing~~Variation or revocation~~

486.51 (1) A court that makes an order under section 486.4 or 486.5 or, if the court is for any reason unable to act, another court of equivalent jurisdiction in the same province, ~~must~~ **may**—~~and, on application of the victim, the witness whose identity is protected by an order, a prosecutor acting with a victim or a witness’s consent, or another person representing a victim’s or witness’s interests, must~~— vary or revoke the order as requested, unless

(a) the person whose identity is protected and regarding which the variation or revocation is sought is unable to express their wishes; or

(b) the order to be varied or revoked protects the identity of more than one person and the revocation or variation would reveal the identity of an individual who wishes their identity to be protected—~~hold a hearing to determine whether the order should be varied or revoked.~~

Order protecting the identity of more than one person

(2) If the order protects the identities of more than one person, the court shall determine whether the order should be varied or revoked by balancing the interests of the people whose identities are protected and determining whether the order can be varied in a way that would protect the interests of all of them.

Victim or witness unable to express their wishes

(3) If the variation or revocation is sought with regard to a victim or witness who is unable to express their wishes, the court shall consider whether the variation or revocation is in the interests of justice, excluding any consideration of the interest of the accused or the person who was the accused.

Jurisdiction

(4) A hearing to determine whether to vary or revoke an order may take place at any time, including after the completion of the court proceedings, if it is necessary to determine whether an order should be varied or revoked.

Standing

(5) If a hearing is held, the court may hear from the victim or witness seeking to vary or revoke the order, the prosecutor, or any other victim or witness whose identity is protected by an order. The accused or person who was accused has no standing at the hearing and does not require notice of the application prior to any hearing.

Accused

(6) If the order is varied or revoked, the court shall order the prosecutor to take all reasonable steps to inform the accused or the person who was the accused, as soon as feasible, that the order has been varied or revoked.

.....
4.1 Section 486.6 of the Act is amended by adding the following after subsection (2):

(3) Subsection (1) does not apply in respect of a failure to comply with an order where:

- a) The person’s identity is protected by the order with which they have failed to comply; and,**
- b) The person did not, knowingly or recklessly, reveal the identity of, or reveals particulars likely to identify, any other person whose identity is protected by that order.**

.....
32.1 Section 672.501 of the Act is amended by adding the following after subsection (3)

Information

(3.1) Where a Review Board makes an order directing that any information that could identify a victim or a witness shall not be published in any document or broadcast or transmitted in any way, the Review Board must promptly inform the person whose identity

is protected by the order of the existence of the order, its requirements and the consequences of failing to comply, and the possibility of and process for revoking or varying the order.

32.2 Subsection 672.501(4) of the Act is replaced by the following:

(4) An order made under any of subsections (1) to (3) does not apply in respect of the disclosure of information **made by a person whose identity is protected by the order, or to the disclosure of information made** in the course of the administration of justice if it is not the purpose of the disclosure to make the information known in the community.

32.3 Section 672.501 of the Act is amended by adding the following after subsection (11):

(11.1) Subsection (11) does not apply in respect of a failure to comply with an order where:

- a) The person's identity is protected by the order with which they have failed to comply; and,**
 - b) The person did not, knowingly or recklessly, reveal the identity of, or reveal particulars likely to identify, any other person whose identity is protected by that order.**
-

32.4 Section 672.501 of the Act is amended by adding the following after subsection (11.1)

Varying or revoking of order

(11.2) (1) A Review Board that makes an order under this section must, on application of the victim, a witness whose identity is protected by an order, or another person representing a victim's or witness's interests, vary or revoke the order as requested by the victim, witness or prosecutor, unless

- (a) the person whose identity is protected and regarding which the variation or revocation is sought is unable to express their wishes; or**
- (b) the order to be varied or revoked protects the identity of more than one person and the revocation or variation would reveal the identity of an individual who wishes their identity to be protected.**

Order protecting the identity of more than one person

(2) If the order protects the identities of more than one person, the Review Board shall determine whether the order should be varied or revoked by balancing the interests of the people whose identities are protected and determining whether the order can be varied in a way that would protect the interests of all of them.

Victim or witness unable to express their wishes

(3) If the variation or revocation is sought with regard to a victim or witness who is unable to express their wishes, the Review Board shall consider whether the variation or

revocation is in the interests of justice, excluding any consideration of the interest of the accused or the person who was the accused.

Hearing

(4) A hearing to determine whether to vary or revoke an order may take place at any time, if it is necessary to determine whether an order should be varied or revoked. The person found not criminally responsible has no standing at the hearing and does not require notice of the application prior to any hearing.

Variation or revocation

(5) If the order is varied or revoked, the Review Board shall take all reasonable steps to inform the person found not criminally responsible, as soon as feasible, that the order has been varied or revoked.

Annex 2: About the Signatories to this Submission

Ending Violence Association of Canada / L'Association canadienne pour mettre fin à la violence

The Ending Violence Association of Canada is a national organization that works to amplify the collective voice of those who believe it is possible to end gender-based violence. Our membership includes provincial and territorial networks of sexual assault centres and other gender-based violence organizations from across the country.

Legal Advocates Against Sexual Violence (LASV)

Legal Advocates Against Sexual Violence, launched in the spring of 2023, is an organization of legal professionals who represent survivors of sexual violence. Our goal is to raise public awareness, advocate for legal reform, alternatives to the criminal justice system, and provide support and mentorship to our members.

Megan Stephens

Megan Stephens is an advocate for women's rights in the justice system. An experienced litigator, including as a Crown, defence and complainant's counsel, she has appeared at every level of court and developed particular expertise in complex criminal appeals and constitutional litigation concerning *Charter* rights. She is the co-author of "[You Choose What to Do Next: Understanding Publication Bans in Criminal Proceedings Involving Sexual Offences Guide](#)".

National Association of Women and the Law / Association nationale Femmes et Droit (NAWL / ANFD)

The National Association of Women and the Law (NAWL) works to achieve substantive equality and the realization of human rights for all women in Canada through legal education, research, strategic intervention, coalition work, and feminist law reform advocacy, particularly at the federal level.

Pamela Cross

Pamela Cross is a feminist lawyer; a well-known and respected expert on violence against women and the law. She works as a researcher, writer, educator and trainer with women's equality and violence against women organizations across Canada. She is the co-author of "[You Choose What to Do Next: Understanding Publication Bans in Criminal Proceedings Involving Sexual Offences Guide](#)".

Possibility Seeds

Farrah Khan is the Founder and CEO of Possibility Seeds, a Canadian social change consultancy dedicated to gender justice, equity, human rights and inclusion. With over 20-years of experience working with community organizations, governments, private and public institutions, we care

deeply about the impact of our work. Possibility Seeds is fueled by radical hope, planting the seeds for a wonderfully equitable future.

Robin Parker

Robin Parker has seen the justice system from all sides, as a prosecutor and defence counsel, an advocate for victims and witnesses, and an investigator and decision-maker. For over 25 years, she has argued countless trials and appeals. She has helped nearly a dozen Ontario complainants, *pro bono*, lift their publication bans.

The Canadian Association of Elizabeth Fry Societies (CAEFS)

The Canadian Association of Elizabeth Fry Societies (CAEFS) is a national feminist organization whose purpose is to address the persistent ways that criminalized women and gender diverse people are excluded from community and denied their humanity. We do this through advocacy, law reform, public engagement, coalition-building, and thought leadership.

Women's Legal Education and Action Fund (LEAF) / Fonds d'action et d'éducation juridique pour les femmes (FAEJ)

LEAF is a national charitable organization that advocates for the equality of all women, girls, trans, and non-binary people through litigation, law reform, and public education. Since 1985, LEAF has intervened in over 150 cases - including many before the Supreme Court of Canada - that have advanced gender equality in Canada.