

Minister of Justice
and Attorney General of Canada



Ministre de la Justice
et procureur général du Canada

The Honourable / L'honorable David Lametti, P.C., K.C., M.P. / c.p., c.r., député
Ottawa, Canada K1A 0H8

April 17, 2023

Mr. Randeep Sarai, M.P.
Chair
Standing Committee on Justice and Human Rights
House of Commons
Ottawa ON K1A 0H6

Dear Colleague:

On December 13, 2022, the Standing Committee on Justice and Human Rights presented its report, entitled *The Defence of Extreme Intoxication Akin to Automatism: A Study of the Legislative Response to the Supreme Court of Canada Decision R. v. Brown*. The Committee requested that the Government table a response to the report's recommendations, which are aimed at promoting understanding of section 33.1 of the *Criminal Code* and related jurisprudence, countering misinformation, and ensuring the section fulfills Parliament's objective in a manner consistent with the *Canadian Charter of Rights and Freedoms*.

On behalf of the Government of Canada, and pursuant to Standing Order 109 of the House of Commons, I am pleased to respond to the Committee's report. I would like to thank the Committee for its study of section 33.1 of the *Criminal Code*. The Government acknowledges that the issue of self-induced extreme intoxication raises significant concerns for survivors of violence.

The Government recognizes that the passing of amendments to section 33.1 occurred quickly in order to fill a legal gap left by the decision of the Supreme Court of Canada (SCC) in *R v. Brown* in May 2022. The amendments ensure that individuals who voluntarily consume intoxicants in a criminally negligent manner, become extremely intoxicated, lose control, and harm others can be held criminally responsible. The Government believes that the legislative option chosen is constitutionally sound and effective at holding perpetrators of self-induced extremely intoxicated violence accountable. The Government commits to continuing to study the issues raised by the

Committee's Report, which includes ensuring the Department of Justice Canada communicates with the public on important legal issues and counters misinformation that could be damaging to public confidence in the legal system. Furthermore, the Government commits to continuing to assess the impact of the existing legislative framework.

Communicating with the public on important legal issues and countering misinformation

The Government is committed to ensuring that the public is informed of important legislative changes and to countering misinformation that is impacting the public's perception of the criminal justice system. In the context of the defence of extreme intoxication akin to automatism, the Department of Justice Canada issued a series of social media posts throughout fall 2022 to help correct misinformation about the SCC's decision in *R v. Brown* and clearly explain the new law on self-induced extreme intoxication. For instance, departmental communications clarified that being drunk or high is not a defence for committing serious crimes like sexual assault, and that the amendments to the *Criminal Code* will ensure that people who negligently reach a state of extreme intoxication and harm others can be held criminally responsible. Going forward, the Department of Justice Canada is committed to working with key government partners to expand these efforts through a multi-pronged approach to further correct misinformation and improve overall understanding of the new law in a sustained way over the long term.

Following the release of Supreme Court decisions that have a significant impact on the public, the Government takes a role in explaining the law to the public. The Department of Justice Canada takes a strategic communications approach and monitors traditional and social media to identify any misunderstanding of a decision and takes corrective measures as needed. The Department's work in this respect sits alongside the efforts of the SCC itself, which provides plain language summaries of decisions on its website and regularly briefs media in order to help the public understand the impact of its rulings. The Department will ensure that communications efforts related to SCC decisions within its mandate are coordinated, timely, and respect both the role of the judiciary and government policy-making processes. When SCC decisions that relate to the Department's mandate are released, enhanced efforts will be made to identify the potential impacts of a decision on people in Canada to ensure awareness of the decision. Timing of these communications activities will need to take into consideration approved government policy direction in relation to SCC decisions. Public opinion research could be used to identify the level of public awareness and misinformation present in the public environment to help refine communications efforts. Any public communications from the Government on SCC decisions must avoid politicizing the Court's process, which could bring the administration of justice into disrepute, and must not provide legal advice to the public.

Assessing the impact of the existing legislative framework

Extreme intoxication akin to automatism is a state where a person is unaware of or has no voluntary control over their actions as a result of intoxication. Generally speaking, alcohol alone will not lead to a state of automatism. Additionally, proof of extreme intoxication must be done by way of expert evidence. Enacted in June 2022 in response to the Supreme Court of Canada's *Brown* decision, which struck down the former section 33.1 of the *Criminal Code*, *An Act to amend the Criminal Code (self-induced extreme intoxication)* (former Bill C-28) introduced a new version of section 33.1, limiting the ability of an accused to raise self-induced extreme intoxication as a defence.

The new law reflects the guidance of the SCC in *R v Brown* regarding a Charter compliant approach to criminal liability for violent crimes committed by individuals while in a state of self-induced extreme intoxication. It does so by enabling liability to be found where the consumption of intoxicants—which later led to a state of extreme intoxication and a violent act—was itself criminally negligent. In this circumstance, criminally negligent consumption of intoxicants arises where the accused departed markedly from the standard of care expected of a reasonable person in consuming an intoxicating substance, taking into account all relevant factors such as the quantity and nature of substance ingested, and whether there was an objectively foreseeable risk that the intoxicants could cause the person to lose control over their actions and harm another person. That is, being in a state of extreme intoxication would not be a defence to general intent violent offences where that state was created by the accused's own criminal negligence.

The Department of Justice Canada always monitors the impacts of criminal law reform, and is doing so for section 33.1, including through relevant case law, academic commentary, media, and other sources. Cases involving intoxication so extreme that it deprives individuals of the capacity to act voluntarily and to know what they are doing are incredibly rare; it may, therefore, take several years before trends in the application and interpretation of the new section can be observed. While data may be limited in three years for a parliamentary review, the Government will make available any data that exists at that time.

The Government recognizes the impact of intoxicated violence on women, as well as on Indigenous, racialized, and 2SLGBTQI+ people, and is committed to ensuring that the justice system holds offenders accountable. Section 33.1, while respecting an accused's rights under the Charter, provides a pathway to conviction for general intent crimes of violence where intoxicating substances are consumed in a manner that departs markedly from the standard of care expected of a reasonable person, considering the risk that consumption could cause extreme intoxication and lead to violence and steps the person took to avoid any such risk. The Government has taken significant steps to inform the public of what extreme intoxication means and how the new section 33.1 limits the use of extreme intoxication as a defence. The Government has also made a deliberate effort to

counter misinformation regarding when an accused can rely on this narrow defence. The Government will continue to communicate with the public and monitor the impact of section 33.1 on public safety, and will take swift action to improve the law should that be necessary. We are committed to protecting the public and ensuring that violent offenders can be held accountable for the violence they inflict on others where they are criminally negligent in consuming dangerous mind- and behaviour-altering substances.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Lametti', with a stylized flourish at the end.

The Honourable David Lametti, P.C., K.C., M.P.
(he/him)
Minister of Justice and Attorney General of Canada