



Criminal Lawyers' Association
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From the office of the President

Thursday, May 7, 2020

We want to get our members back to work both safely and as soon as possible.

The speed of events and concentrating on the dedicated efforts of our members to empty the jails and make the Courts safe has made detailed timely reporting difficult.

Now as we enter phase two I want to advise we have reason for hope and we are all looking forward to getting back to work. Managing the pandemic response and getting our members back to business and earning a living is our ongoing mission.

The very survival of an independent defence bar is at stake. We are committed to taking every step we can to keep the defence bar alive and well. We are advocating for financial relief and consideration with both governments, the Law Society and LAO.

We are working every day to get things up and running in a safe manner.

Representatives of the CLA are involved in every major committee and initiative that is currently ongoing at all three levels of Court in Ontario. Covid-19 has led to an overwhelming and swift mobilization of many projects, some short-term and some long-term. The practice of criminal law will never be the same. We are involved in numerous daily meetings. Many of the key initiatives that are now in place, or will soon be rolled out, have been shaped to a large extent by our contributions. While we plan to update you on many of these in a separate communication, I wanted to focus this message on what is likely the single most important issue on everyone's mind: Getting back to work.

As everyone knows, both the SCJ and OCJ have suspended all but urgent business. Jury trials have been adjourned at least into September and all other non-urgent matters have now been adjourned into early July. While the CLA was steadfast in its position that closing the Courts was necessary in mid-March, rest assured that we are advocating fiercely for the immediate expansion of work that can be done (remotely at this point) as soon as possible.

Our position is and has been that in-person proceedings, at least in a limited way, should be conducted only as soon as public health officials confirm that these can be set up with appropriate social distancing and sanitation measures in place. This may require a great deal of flexibility and we are encouraging government officials to take the necessary measures that will give the health experts sufficient comfort to re-open at least some of the doors. Until then, many proceedings can be conducted by video-conferencing, provided that the technology chosen meets certain minimum requirements. While, in our view, some evidence is ill-suited for remote trials, there are many proceedings that can be conducted in whole or in part on ZOOM.

One final aspect of our position has been that no-one (neither lawyer nor defendant) should be "forced" to proceed with either a remote or socially-distanced in-person trial without their voluntary consent. We agree that there are limitations to remote proceedings and the decision to proceed in this fashion, even if available, should be up to the individual client and lawyer. Similarly, even if the Courts are deemed sufficiently safe to permit some socially-distanced in person proceedings, there may be members who have personal views or medical reasons that would lead them to choose to wait before attending in person at some later time in the future.



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From the office of the President

The executive is acutely aware how devastating the court shutdown has been on our members' livelihood and the impact any unnecessary delay in getting back to work will bring. We are also aware that all the great technological advances soon to be rolled out are meaningless if there are no defence lawyers still in private practice to be able to use them.

Together we saved thousands of families from the devastating injustice of being trapped in a cage during a pandemic; now we will work together again with our justice system partners with the same resolve to save the independent Criminal Defence Bar. We have allies in this task and we will succeed.

Hang in there, we hope to have better news soon.

John Struthers
President
Criminal Lawyers' Association