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**DEFENCE BAR**

### MEMBER PROFILE QUESTIONS

#### INTRO :

**Member Name :** Simon Borys

**Year of Call :** 2014

#### QUESTIONS :

##### **1- How did you get into criminal law?**

Before going to law school, I was a Police Officer and I also had a degree in Philosophy, Legal Studies, and Criminology, so Criminal Law was really all I was interested in. I chose criminal defence instead of prosecution because I'd already had my fill of working for the government. I got into Correctional Law, which is basically all I do now, because I had the opportunity to participate in the Correctional Law Project when I was a student at Queen's and I really enjoyed it and wanted to continue to do it after I was called to the Bar.

##### **2- What type of cases do you enjoy defending the most and why?**

In terms of Criminal Law, probably drug cases, because they often focus on the actions of the police and I feel that my experience in policing gives me some great insight for cross-examinations. In terms of Correctional Law, I like doing both provincial and federal



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parole cases. I find it very rewarding to prepare my clients to talk to the Parole Board about their offences and how they got to this point in their life, especially when I can help them gain insight into their offending and make connections between their past traumas and the choices that got them here. This can really help to illuminate their path to rehabilitation and healing.

### **3- How did the practice of criminal law change you?**

From my time as a police officer, I certainly had lots of experience with the people who would later become my Criminal and Correctional Law clients, but obviously from a different perspective. I thought I knew about and understood this group of people, but once I started interacting with them as their lawyer, I was able to see not only the diversity among this group, but also how many more layers there were to the individual people. The most profound thing I have come to realize through practicing Criminal and Correctional Law is that there really are no bad people, only people (usually deeply flawed) who have made bad decisions—that is to say, decisions made with limited knowledge, skills, and resources, which seemed like good decisions at the time through the narrow lens they were using, but which turned out to have negative consequences for themselves and others.

### **4- If there is one thing only you would like to see change in criminal law, what would it be?**

In Criminal Law, it would be a greater respect for the presumption of innocence. This would mean things like liberal use of bail, limiting the publication of the names of accused people whose charges are still outstanding to avoid people's lives being ruined before their cases can be heard, and limiting the use of non-conviction records on



background checks and in other proceedings, such as parole hearings. In Correctional Law, it would be treating inmates with a greater level of compassion and respect. This is something that the correctional services, the courts, and the general public could all do better.

**5- What advice would you give to your younger self when you first started practising criminal law?**

Don't let how routine cases become for you cause you to forget how significant each case is for the individual client. Think how stressed you would be if you were facing a serious allegation, how frustrated you would be with months of delay for disclosure or court dates, or how anxious you would be if you were in jail or prison and were trying to get out on parole—and then treat the client like you would want to be treated if you were in their situation. Make sure they understand what's going on, why things are taking as long as they are, what their options are and what the pros and cons of those options are, and what the next steps are. This will help manage the client's experience of the process, which can be just as important as the ultimate outcome. I deal with Correctional Law clients after their criminal lawyers are done with them and I have found it is not at all uncommon for these clients to be angry and upset with their criminal lawyers, even when they objectively got a good outcome to their case (notwithstanding that they are still in custody for some length of time), not because of the fact that they are in custody, but because of their experience of the process of being involved with the criminal justice system and how their lawyer shepherded them through that.



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## **6- How do you deal with bad work days?**

I ask myself whether I'm upset with myself because I know I could have done something better or whether I'm upset with the system or some other actor within the system. If it's the former, I acknowledge my imperfections and pledge to continue striving to do the best I can; if it's the latter, I allow myself to grieve for the fact that something that was unjust or unfair happened and I ask myself whether there's anything I can do to prevent that from happening again (this is what leads me to a lot of the test case work and interventions that I do). I think it's important to give yourself the space to process your feelings about how a case went, rather than just putting your head down and moving on to the next case.

## **7- What do you think of Zoom court?**

I'm a big fan. I don't think Zoom should be forced on anybody if there is a reason to have something done in person, but so much of what we do doesn't need to be in person and there is so much time and energy to be saved by Zoom that can be reinvested into your clients or your practice or yourself. In Correctional Law, parole hearings have moved to being done by WebEx (for federal) and phone (for provincial) and this has been so much more efficient than having to go into the institutions and wait around, sometimes for hours, for a hearing to start with nothing to do and no phone or computer to use. We are also now able to use video conferencing to prep inmates for parole hearings, as opposed to having to go into the institution to do so, and, as a result, I have been able to give much more actual prep time to each client.



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### **8- Any embarrassing court story you're willing to share?**

It's for a parole hearing—I once had a hearing scheduled for third on the list at Collins Bay Institution, which should have given me a couple hours in the morning before it started to run some errands. I was actually driving on Bath Rd. near Collins Bay when I got an email that the hearing had been moved up because the second hearing had folded. I could either go home and get changed and do the hearing by video but be late, or take a right into the institution and just do the hearing in person, on time. I chose the latter. The Board members were appearing by video, so in the institution it was just my client, his parole officer, and myself. At the start of a parole hearing, everybody goes around and identifies themselves for the voice recording. When the guy wearing jeans and a hoodie identified himself as the lawyer, the Board member laughed and told me he thought I was the inmate. Fortunately, I'd spent many years building a good reputation with the Board, so once I explained the situation, nobody gave me a hard time. It was still pretty embarrassing though.

### **9- Who is your role model/inspiration in criminal law?**

In Criminal Law, I would say Eddie Greenspan. When I had the opportunity to meet and speak with him at an event at law school, he seemed larger than life. I admired the reputation he had built for himself, as well as the many notable and precedent setting cases he had been involved in, but mostly I admired his efforts to abolish the death penalty. He showed how lawyers are uniquely well positioned to bring about systemic change. In Correctional Law, I would say Fergus (Chip) O'Connor, one of the pioneers of Correctional Law in Canada. I am told by people who were around at the time that Chip made Correctional Law a serious area of practice in the 70s and 80s. Before him, it was just something that lawyers dabbled in. He was the direct inspiration for my decision to focus exclusively on Correctional Law. He has also been involved in many notable cases and has singlehandedly raised the rights of prisoners in this country in a



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number of important areas, such as the right to vote. Both Eddie and Chip were inspirations for the test cases/constitutional challenges and interventions that I do in my own practice and through the Canadian Prison Law Association, as chair of their Advocacy Committee.

#### **10- What's your favourite song?**

I like a wide range of music and don't think I have a favourite song, but I've always thought that a great song to have as my on-hold music for my Correctional Law clients would be I Fought the Law by The Clash. I think most of them would appreciate the irony and the humour in that choice.

#### **11- How do you maintain work life balance and how do you deal with the stress of the job?**

Deciding to focus exclusively on Correctional Law has reduced my stress immeasurably. It has allowed me to perfect my skills in this area and become very comfortable with the Board members and parole officers I deal with on a daily basis. Coupling that with working exclusively from home with my dogs has allowed me to achieve a work-life balance that I feel is sustainable indefinitely. But regardless of what area of practice you choose or whether you prefer to work from home or the office, I think an important component of reducing stress and maintaining work-life balance is to block out some of the noise. With the internet, the 24-hour news cycle, and social media, we are bombarded by all of the world's problems, all the time, and that is simply not manageable. We cannot take on every cause. We cannot become upset at every injustice. We cannot worry about the ultimate fate of the world. All we can do, and all we need try to do, is just be the best we can within the sphere in which we operate and try to improve the world and the lives of others through our work. If I am doing that, I can be happy and enjoy the privileged life that I have, despite the fact that things in the world are far from perfect.