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BARREAU DE L'ONTARIO  
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March 30, 2022

The Honourable Sylvia Jones  
Solicitor General  
Ministry of the Solicitor General  
George Drew Building  
25 Grosvenor Street,  
18th Floor  
Toronto, Ontario  
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Dear Minister Jones

### **Continuing Issues of Client Access in Ontario's Correctional Facilities**

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The Ontario Bar Association continues to advocate for access to justice in all sectors and through this submission we are proposing practical solutions to issues that are currently impeding access to clients incarcerated in Ontario's Correctional Institutes. The OBA is fortunate to have a Criminal Justice section that offers multiple decades of experience and wisdom. The section's working group has dedicated significant time and expertise to drafting this submission for your consideration.

This is to follow up on our letter from March 2021, addressing the concerns regarding the Covid situation in Ontario correctional facilities.

The OBA is the largest and most diverse volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system. Providing services to people and businesses in every area of law in every part of the province. Each year, through the work of our forty practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public. We deliver over 325 in-person and online professional development programs to an audience of over 12,000 lawyers, judges, students, and professors.

In expressing our ongoing concerns regarding access to clients, we have identified several issues as well as some proposed solutions. These are outlined below. We recognize that some of these issues are institutional and can relate to staffing issues. The OBA supports increasing the use of technology that can reduce reliance on staff. We would also support the increased use of non-

correctional staff in institutions, where possible, to increase capacity and save correctional officer staff resources for other tasks. Where their expertise and skills are required.

### **Defence counsel difficulties with accessing their clients in custody**

Counsel is often encouraged to rely on Access Defence and Remote Defence Access (at TSDC) to remotely communicate with clients. This saves staffing resources as correctional officers are not required to move bodies around during in person visits. It also saves time in court as instructions can be taken before court appearances.

However, OBA members report that Access Defence is highly unreliable. Clients are regularly not brought at the designated time, as paperwork sent by Bell Canada (who has the contract for Access Defence) is often lost and does not make it to the detainee. Also, in many places, there is only one Access Defence call on the range and no mechanism to ensure that call bookings do not overlap. Further, it is inconvenient to book Access Defence calls as the booking centre. It is only open during regular business hours when counsel is often in court. Finally, calls must be booked 24 hours in advance. Which does not reflect the reality that client instruction must sometimes be obtained in very short order.

Similar issues have been identified for the Remote Defence Access system. Indeed, these video suites are typically tied up during the day as they are needed for court appearances. It should be noted that often Remote Defence Access is preferred since it allows screen sharing and a means to review disclosure with accused persons.

Proposed solutions:

- Organize a stakeholder working group between all parties with an interest in the Access Defence system (Bell Canada, SOLGEN, institutions, defence lawyers) to identify the specific issues and produce solutions.
- Utilize technology to create a universal booking app for all institutions so that booking overlap can be avoided and calls can be booked outside of office hours.
- Enact a standardized protocol across the province to ensure that Access Defence call notifications are provided to accused persons in a timely fashion. For instance, by having a dedicated staff member coordinate the Access Defence system at each institution.
- Expand Remote Defence Access across the province and at the TSDC by increasing the number of video suites or providing laptops/tablets to detainees for the calls.

### **Defence counsel difficulties in accessing accused persons when they have a court appearance**

Counsel often needs to consult with clients immediately on the same day of certain appearances. Due to COVID, bails, guilty pleas, and many trials are now conducted by Zoom. Often, positions change, or matters are negotiated which requires counsel to take instruction from their client. For instance, there may be changes in the proposed bail conditions on a

consent release or probation terms during a plea. Whereas before, defence counsel could see their clients in cells in the courthouse or simply walk over to the prisoner's dock, those options are not available in the Zoom world. This creates an issue as "break out rooms" are now utilized to facilitate taking instruction. This may not be a problem in a trial court, but in plea and bail court it can significantly slow matters down as often no other detainees can be brought to court while the breakout rooms are being used. Even worse, matters may have to be put over as counsel cannot obtain instruction.

Proposed solution:

- Create a Zoom room where counsel can sign up to speak with their clients in very short order. Zoom calls can then be facilitated by either using the video suites on the units or by having a dedicated liaison correctional officer circulate with either a phone or laptop/tablet to facilitate calls with counsel.

### **Substantial delays in bringing accused persons to video court**

OBA members are reporting substantial delays between an individual being requested in court and their actual attendance in court. One member recently reported a delay of three hours waiting for an accused person to be brought to bail court which meant they could not be interviewed by Bail Program. While this is an extreme example, the fact is that delays in bringing accused are consistent and ongoing. This impacts the number of matters a court can hear in each day, the liberty interests of those accused with a proposed consent release or in a time served position, and the increased resources required to have staff sit late in court.

Members are often told the delays result from staffing shortages. Delays are also caused by the need for counsel to consult with their clients in break out rooms because there is no other way to do so (see above). Also, the OBA understands that the number of set date appearance remains higher today than it did pre-COVID.

Proposed solutions:

- Coordinated response with MAG to reduce the number of appearances through a backlog strategy and increased use of alternative means of appearance (enhanced designations, discretionary bench warrants).
- Providing alternatives for counsel to rapidly consult with clients outside of court as outlined above so time is not spent waiting for consultations in break out rooms.
- Hire additional staff and increase number of video units through laptops and tablets which are fine for administrative appearances. It should be noted that cell phones are now commonly used for such appearances so laptops/tablets would be an improvement.
- Increased use of non-correctional staff in institutions who work exclusively on video appearances to increase capacity and save correctional officer staff resources for other tasks.

- Increased use of parole and temporary absence permits to reduce the numbers in jails to free up staff.

### **Inability to for social services to access accused persons in custody**

It is not only counsel who need to consult with accused persons in custody. Social services, such as Bail Program or mental health/Indigenous organizations (e.g., Fred Victor, ALS) frequently must conduct intake interviews with accused persons at the institutions. For example, a consent bail may be hashed out subject to a mental health plan. The issue then becomes that workers from these organizations are not able to consult with people at the institution. One member reported that it took two days for Bail Program to be able to reach the accused when a consent release was available to Bail Program. The result was that the person needlessly spent two days in custody. Availability of these consults must be rapid and on the same day access is requested.

Proposed solutions:

- Like above, create a dedicated virtual zoom room where these workers can queue to consult with accused persons. The analogy would be to creating a “virtual cells” meeting area asking to what is physically present in courthouses.
- Alternatively, have a dedicated liaison officer circulate with a list and a phone for the intake interviews.

We believe these salient solutions can improve the ability of not only counsel, but other players in the Justice system, to access incarcerated clients. Access to clients, directly relates to access to justice. These solutions would allow matters in court to proceed in a timelier manner.

It is beyond question that remote appearances/video remands are beneficial to the justice system in terms of reducing resources needed to bring accused persons back and forth to court. The OBA hopes that the system efficiencies implemented in the initial stages of COVID can now be improved and expanded upon to the benefit of all stakeholders. No one wants to see a return to purely in-person appearances.

Once again, the OBA appreciates the opportunity to work cooperatively with the government to find solutions to issues facing the province’s correctional facilities. We look forward to the opportunity to discuss the issues and solutions we have noted here, as well as any other opportunities to address ongoing issues in the correctional system.

Yours very truly,



Karen Perron,  
OBA President