

Chief Justices and Regional Senior Justices of Ontario,

We write you on behalf of the Criminal Lawyers' Association and the Ontario defence bar to renew our call for adequate accommodation of caregivers during the school closures and other lock down restrictions associated with the ongoing pandemic.

We last addressed the Chief Justices on this topic in our February 7, 2021 letter, which we have attached for reference. In that letter, we spoke to you of the crisis of retention of female lawyers in the criminal bar, the strain that the pandemic has placed on defence lawyers who are also caregivers, and the disproportionate effect that pandemic restrictions have had on women, parents, single parents, lawyers who are recently called to the bar, lawyers who experience mental health challenges, racialized lawyers, and less affluent counsel.

We thank you, Chief Justices, for your considered and compassionate responses to our February 7, 2021 letter. However, this wave of the pandemic presents renewed challenges and require our attention yet again.

The projections regarding attrition, burnout, and adverse mental health effects expressed our original letter have come to fruition in the intervening months. The strain of the pandemic, compounded by other factors, has driven women, caregivers, and others to leave the profession at an alarming and unprecedented rate.

While the attrition problem is complex, judicial accommodation of care issues is an area where the judiciary is well-positioned to make an impact on the problem. It is also an area where those of us who work in the criminal justice system can come together to mitigate the effects of the pandemic on each other's mental health and wellbeing.

Unfortunately, in this wave of the pandemic, the CLA has received a significant number of reports from defence lawyers indicating that they are being judicially directed to proceed with matters notwithstanding significant care responsibilities and to make alternate arrangements for childcare.

In response, we ask that all Ontario judges be urged to take a contextual and deferential approach to adjournment requests and adopt flexibility regarding deadlines during this fourth wave. We are extremely sympathetic to the strain on judges and the pressure to keep the criminal justice system running. However, while our courts are in crisis, so are our families. We cannot reasonably be asked to sacrifice the latter for the sake of the former. It is therefore imperative that the judiciary be mindful of the impact their directions have on the children and dependent adults of practitioners. This is particularly so, because defence lawyers operate in quasi-compulsory work environments, where orders to attend court proceedings or produce work product often carry the force of law. When we chose to become defence lawyers, we understood that it was a difficult job to balance with caregiving responsibilities; however, we did not sign up for a job that compels us to abandon our children when they need us most.

Research in this area supports the lived experiences of our membership regarding the strain that the pandemic is having on our children and the ability of caregivers to mitigate or aggravate those effects. Unsurprisingly, a meta-study (rapid review) by Brooks et. al. of the psychological impacts of quarantine, social distancing, and self-isolation in response to previous pandemics reveals significant negative psychological effects on children and youth. The effects of these measures include post-traumatic stress symptoms, confusion, and anger, which may be long-lasting (months to years post-

pandemic).¹ Evidence suggests that young children are impacted by their caregivers' responses and can experience significant distress when parental response is insufficient. Specifically, children in households where the adults are unavailable to support the children are at higher risk of experiencing adverse mental health consequences.²

Between April and June 2020, over 1300 youth and young adults (12-25 years old) and over 700 parents/caregivers of children (4-25 years old) in Ontario responded to a web-based survey about how the current pandemic is affecting their mental health. The results are alarming. Nearly two thirds of youth said their mental health had gotten worse since the pandemic. Almost 30% said they felt sad nearly every day and one quarter of young people reported feeling lonely every day. Over two thirds reported experiencing mild to moderate levels of anxiety; just under 20% reported severe levels of anxiety. Caregivers also reported increased strain, with almost one third reporting feeling moderate to severe levels of caregiver strain and 32.5% reporting that they had sought, or were planning to seek mental health support as a result of the impact of the pandemic on their daily lives. Overall, the extent to which parents considered their child to be impacted by changes to their school year was significantly related to the overall mental health of both parents and children since COVID-19.³

SickKids hospital has recently released research on how the pandemic has impacted the physical and mental health of children in Ontario. Their research demonstrates a serious, sustained negative impact on the mental health of Ontario children, youth and their families from the ongoing pandemic. More than half of children aged 8-12 and 70% of adolescents reported clinically significant depressive symptoms during the second wave (February to March 2021), and mental health did not improve when the school year resumed.⁴

As caregivers, we don't need research to see that our children are suffering; we live with it every day. We know that many in the judiciary are observing the impact of the pandemic within their own families. While the court system may have developed the infrastructure to continue in the face of lock downs, our children's needs have not changed. Our children need us just as much – if not more – this time around.

Moreover, care issues are also relevant to physical health. The contagiousity of this new variant is well established. While vaccine uptake among adults working in our field is high, vaccination of children is still in the early stages. As of December 20, 2020, only 0.4% of children aged 5 to 11 had received 2 doses of the vaccine and less than 0.1% had received the booster. Only 0.2% of children aged 12 to 17 had received all three doses of the vaccine.⁵ Concerns about the rapid spread of COVID make it far more challenging for us to find safe childcare options during this wave. Moreover, we note that,

¹ Brooks, S.K., Webster, R. K., Smith, L. E., Woodland, L. E., Wessely, S., Greenberg, N. & Rubin, G. J. (2020). [The psychological impact of quarantine and how to reduce it: rapid review of the evidence](#). The Lancet, 395, 912-920.

² Brown, J., Summers N., Sundar, P. (2020). [Return to school during COVID-19: Considerations for Ontario's child and youth community mental health service providers](#). Ontario Centre of Excellence for Child and Youth Mental Health, at p. 7.

³ *Ibid* at pp 8-11.

⁴ SickKids (July 8, 2021). [SickKids releases new research on how COVID-19 pandemic has impacted child and youth mental, physical health](#).

⁵ Public Health Ontario (2021). "COVID-19 Vaccine Uptake and Program Impact in Ontario: December 14, 2020 to December 19, 2021".

unlike Crown Attorneys and court staff workers, defence lawyers are not included in the Ontario government's free childcare program for essential frontline workers.⁶

These contextual factors must be considered by judges when evaluating requests for adjournments or imposing deadlines on counsel during this time. Detailed personal submissions about a practitioner's personal situation or the circumstances of their child should not be required.

Moreover, we ask that the judiciary give all such requests a high level of deference. Defence lawyers are in the best position to balance the relevant competing factors – including those which emerge from our personal lives and the personal lives of our partners and dependants – to determine whether an adjournment request is necessary in a particular case because of school closures or other pandemic-related factors. We ask that the judiciary bear in mind that defence lawyers, as non-governmental and predominantly non-salaried workers, have been among the justice system participants who have been severely financially impacted by the pandemic. It is highly unlikely that counsel would ask to adjourn matters unless it was necessary to do so.

In conclusion, we will repeat, with some modification, the suggestions from our February 7, 2021 letter for how the judiciary can assist to alleviate the strain on caregivers at this time:

- Granting adjournment requests aimed at accommodating counsel who have increased care responsibilities whenever practicable and without the need for highly personal submissions by counsel;
- Avoiding the imposition of tasks and deadlines at this time whenever practicable, and bearing in mind that the cumulative effect of tasks which may seem “small” or “easy” when viewed individually, can cause significant strain on practitioners;
- Modifying filing deadline requirements to allow caregivers extra time needed to draft materials or to allow caregivers extra time to respond to applications filed by opposing counsel;
- Considering alternate forms of scheduling for remote trials and hearings, wherever feasible, such as: scheduling matters on alternate days, scheduling matters for shorter time intervals during the day, scheduling matters with start and end times that accommodate care responsibilities, and scheduling trials with non-traditional break times or breaks of longer durations to accommodate care responsibilities during the day;
- Allowing counsel to email instructions for set procedural appearances, such as adjournments, to the court where appropriate; and,
- Adopting a non-adversarial, collaborative approach to scheduling which recognizes the increased burden and strain currently experienced by counsel who are also caregivers.

Finally, we continue to encourage the judiciary to adopt a formal procedure for accommodation, which provides clear guidance to judges and to practitioners on how to achieve adequate accommodation for caregivers for the duration of the pandemic.

Yours Truly,

John Struthers, President

⁶ [Rules for Areas in Shutdown Zone and at Step 1](#), O Reg 82/20 at Schedule 5.

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