



January 29, 2008

Julie Besner
Counsel
Justice Canada
Criminal Law Policy Section
284 Wellington Street
Ottawa, ON K1A 0H8

Dear Ms. Besner,

Re: Proposed bail reform provisions

I would like to thank you and your colleagues for joining us at the Canadian Bar Association's National Criminal Justice Section (CBA Section) meeting on December 1st in Ottawa. The CBA Section always appreciates the opportunity to exchange ideas with Justice Department lawyers and finds the discussion very helpful for our review of proposed legislative initiatives.

At the meeting, you described in general terms a proposal for bail reform to permit release by police with conditions. You informed us that more specific details were being developed, and asked the CBA Section to provide written comments about the ideas discussed informally at the meeting. This letter outlines some preliminary comments. We look forward to a more detailed description of the proposals which will, in turn, allow for a more comprehensive response.

At present, bail conditions can only be imposed by a judicial officer. The CBA Section supports simplifying criminal procedures and reducing paperwork, and recognizes that release by a front line or arresting police officer might be the most expeditious way of proceeding in some circumstances. However, the proposed changes may create, rather than reduce, problems and complexities. We are not convinced they are appropriate at this time. We offer the following additional remarks:

- The restriction of liberty through bail conditions must be narrowly tailored having regard to the circumstances of the allegation and the purposes of bail.
- Any proposal that police releases be done by an officer selecting from a form listing a range of conditions, some that may be quite onerous, carries the risk that officers would tend to err on the side of more, rather than fewer conditions. This has potential to result in conditions that are unnecessary and overly broad.
- Front line police officers tend to be younger officers, perhaps with less experience or training in relation to the operation and objectives of the relevant provisions in the

Criminal Code. Front line police officers are also very busy and may not have the time to carefully consider appropriate conditions of release.

- The risk of police imposing onerous or unnecessary conditions would be coupled by an understandable reaction from the person arrested to agree to whatever conditions might secure their release. This could result in a significant increase in hearings where the defence would later ask the court to adjust or eliminate overly broad conditions.
- The officer deciding conditions of release could also be the officer responsible for an investigation, and the interests of the investigation might either intentionally or unintentionally become part of the decision to release. For example, it would be inappropriate for an officer to use conditions of release to bargain with an individual to elicit cooperation. It would also be a concern if bargaining or negotiation was a factor in responding to a request to the officer for a variation of the conditions.
- There is a strong possibility that after imposing conditions, a police officer would be unavailable or unwilling to change those conditions. Our experience indicates that the more likely response will be to say simply that the issue should be dealt with in court. Meanwhile, a person may be subject to excessive conditions that unreasonably restrict liberty.
- Allowing police to change conditions may lead to reluctance among some prosecutors to consider varying conditions prior to the first appearance unless the accused has first sought a variation from the officer. That would simply create an additional level of bureaucracy.

In sum, we believe that restrictions placed on an individual's liberty should be no greater than necessary to achieve the purposes of bail. Any scheme that would increase a police officer's authority to release on conditions requires recognition that training is an essential prerequisite. Reform of this sort should, therefore, require a commitment of resources to the training of police officers.

These comments represent our preliminary response to the proposals you outlined orally at the meeting. With additional details, we would be pleased to respond more fully to these proposals. We would welcome that opportunity, and again thank you and your colleagues for attending our meeting.

Sincerely,

(original signed by Gaylene Schellenberg for Greg Delbigio)

Greg Delbigio
Chair, National Criminal Justice Section

cc. Anouk Desaulniers
Catherine Latimer
Bonnie Lidstone