

PLA LIBRARY NOTICE

Dear Member,

Please see the message below shared by FOLA Legal Aid Chair, Terry L. Brandon regarding recent changes for bail and early release remedies.

Thank you,

Peel Law Association

April 20, 2020

LAO Changes for Bail and Early Release Remedies

Marcus Pratt, Director General, Policy & Strategic Research, Legal Aid Ontario

DOCUMENTS: [Temporary Absence Application](#) | [Institutional Addresses - General Inquiry Numbers](#) | [COVID-19 Temporary Absence \(LAO Info Sheet\)](#) | [Snow - UTA Decision 16Apr20_Redacted](#)

Good afternoon,

Please find below and attached information that may assist lawyers seeking the release of their clients either through the bail process or by the early release of a sentenced inmate.

Expedited rates for bail reviews

LAO as a temporary and emergency measure to address the COVID pandemic will provide expedited transcript rates for bail reviews. These expedited rates will be offered as an inherent disbursement on the billing portal. LAO hopes to have made the necessary changes to the billing portal by early next week. Recall that LAO has recently, as a response to the COVID pandemic, waived any assessment of merit in issuing bail review certificates.

Applying for Temporary Absence Permits for provincial inmates

The Ministry of the Solicitor General has prepared the attached information to outline the different ways that inmates can access a Temporary Absence Permit (TAP), including the proactive early release reviews that the ministry has initiated. Recall that LAO has recently introduced as a COVID 19 response a modest increase in certificate coverage to allow lawyers to seek early release remedies at both federal and provincial institutions.

Applying for Unescorted Temporary Absences for federal inmates

Please find attached the recent decision of the Bath Institution allow a medically vulnerable prisoner to be released to self-isolate in the community during the COVID-19 pandemic. The importance of this decision and its potential impact on other medically vulnerable inmates is set out below in the report by Paul Quick from the Queen's Prison

Law Clinic. Paul has agreed to share the templates used in this case, which began as an application in federal court, with other counsel.

Report on UTA Stone decision

As anticipated, they mooted us out of Federal Court, but it is my view that the high-profile example set by the Warden's decision in Mr. Snow's case is still one that may be useful to others.

So, instead of a judicial precedent, we now at least have the first practical precedent of the CSC exercising its statutory authority over medical unescorted temporary absences, to allow a medically vulnerable prisoner to be released to self-isolate in the community during the COVID-19 pandemic.

From the beginning, it has been a priority for Mr. Snow that other prisoners might be able to benefit from any progress we might be able to make in his case. For that reason, he has directed us to share a copy of his UTA decision with anyone who may find it useful (it is attached, with only the release address redacted)

The decision acknowledges that, in normal circumstances, medical UTAs are used by CSC for the purposes of authorizing an absence to a medical treatment facility, but that "the increased ability to self-isolate as per the public state of emergency related to the coronavirus pandemic" in the context of a prisoner with serious medical vulnerabilities, is now a basis for authorizing such a UTA to a private residence:

Mr. Snow brought forward a request to be approved for an unescorted temporary absence to his sisters' residence in London, Ontario. This application cited health concerns and cited risks associated with the novel coronavirus to himself within an institutional setting. It is recognized that in regular operational practice the unescorted temporary absence for medical reasons is a tool available to case management teams for consideration where the absence to a medical and/or treatment facility would be beneficial to the applicant. This decision took into consideration the health conditions of Mr. Snow combined with the potential for having a negative health outcome should he contract this virus.

I concur with the MAI and case management team. I am approving the release of Mr. Snow given his specific health circumstances, the absence of violence in his criminal history and an appropriate supervision plan to address his risk and need areas combined with the increased ability to self-isolate as per the public state of emergency related to the coronavirus pandemic.

While this is hardly the clear declaration regarding the scope of s. 155(a) of the CCRR that we were seeking from the Federal Court, it does at least implicitly acknowledge this key point.

It is also hoped that the wide circulation of the public aspect of this story will increase its precedential value in practical terms, as a Warden's refusal to acknowledge that medical UTA's are available for the purposes of protective isolation at home would now be difficult to justify in light of this example.

From the Globe and Mail: https://www.theglobeandmail.com/canada/article-csc-releases-first-federal-inmate-owing-to-medical-vulnerability-to/?utm_source=Shared+Article+Sent+to+User&utm_medium=E-mail:+Newsletters+/-E-Blasts+/-etc.&utm_campaign=Shared+Web+Article+Links

The story was also picked up by the Canadian Press and is reported across Postmedia outlets, including here: <https://nationalpost.com/pmnl/news-pmn/canada-news-pmn/ailing-federal-prisoner-who-fears-covid-19-awaits-word-on-early-release>

Our Clinic is now busily in the process of reaching out to many of the countless other federal prisoners who are highly vulnerable to severe adverse outcomes from COVID-19, to push for their urgent release on similar terms, and we would be happy to coordinate with other counsel and share any of our materials to those who would have use for them.

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