

## Electronic Bail Variations

1. Defence counsel will complete the following forms electronically and submit to the assigned Crown or if there is no assigned Crown it will be sent to Sean Doyle at [Sean.Doyle@ontario.ca](mailto:Sean.Doyle@ontario.ca) and David Moull at [David.Moull@ontario.ca](mailto:David.Moull@ontario.ca).
  - Electronically signed Affidavit of Surety for the Purpose of a Consent Bail Variation
  - Electronically signed Consent Bail Variation Form
  - Copy of the current Release Order
2. Crown will review the variation and sign electronically.
3. Crown will send the following documents to the Newmarket Criminal Administration Office via [yorkcrim@ontario.ca](mailto:yorkcrim@ontario.ca).
  - Electronically signed Affidavit of Surety for the Purpose of a Consent Bail Variation
  - Electronically signed Consent Bail Variation Form
  - Copy of the current Release Order
4. Newmarket Criminal Administration Office will log each variation and send the attachments to the OCJ Judicial Assistants via [OCJNewmarketJudicialReview@ontario.ca](mailto:OCJNewmarketJudicialReview@ontario.ca).
5. A Judicial Assistant will send the documents to the assigned judge for consideration.
6. If denied, the Judicial Official will advise the Judicial Assistant who will notify Crown and Defence Counsel. The Judicial Assistant will then notify the Newmarket Criminal Administration Office via [yorkcrim@ontario.ca](mailto:yorkcrim@ontario.ca).
7. If approved, the Judicial Assistant will insert the Judicial Official's electronic signature and provide electronic copy to Crown and Defence counsel as well as the Newmarket Criminal Administration Office via [yorkcrim@ontario.ca](mailto:yorkcrim@ontario.ca).
8. Newmarket Criminal Administration Office will print the documents and attach to the information and save a copy in the P: drive P:\COURT SERVICES\E-Orders\CENTRAL EAST SCANNED RELEASE ORDERS and send to the bail distribution list.

For the purpose of consent bail variations during the COVID-19 pandemic, electronic signatures will be used. Electronic signatures is defined as the identified stakeholder typing in their name into the document.

Per the Law Society of Ontario: <https://lso.ca/news-events/news/corporate-statement-re-covid-19#can-a-lawyer-or-paralegal-use-virtual-commissioning-in-the-context-of-covid-19--5>

- As a result of COVID-19, until further notice:
  - The Law Society will interpret the requirement in section 9 of the Commissioners for Taking Affidavits Act that “every oath and declaration shall be taken by the deponent in the presence of the commissioner or notary public” as not requiring the lawyer or paralegal to be in the physical presence of the client.
  - Rather, alternative means of commissioning such as commissioning via video conference will be permitted.
  - If lawyers and paralegals choose to use virtual commissioning, they should attempt to manage some of the risks associated with this practice as outlined below.
- Managing the Risk of Virtual Commissioning:  
 If a lawyer or paralegal chooses to use virtual commissioning, the lawyer or paralegal should be alert to the risks of doing so, which may include the following issues:
  - Fraud
  - Identity theft
  - Undue influence
  - Duress
  - Capacity
  - Client left without copies of the documents executed remotely
  - Client feels that they did not have an adequate opportunity to ask questions or request clarifying information about the documents they are executing.

To manage some of the risks:

- Consider whether there are red flags of fraud in the matter. To review these red flags, see the Federation of Law Societies’ Risk Advisories for the Legal Profession resource.\*
- Assess whether there is a risk that the client may be subject to undue influence or duress. If there is such a risk, consider if you are able to assist the client at this time without meeting in person.
- Determine how to provide the client with copies of the document executed remotely.
- Confirm your client’s understanding about the documents they are executing and provide adequate opportunity for them to ask questions during the video conference.
- Be alert to the fact that persons may attempt to use the current circumstances and resulting confusion as an opportunity to commit fraud or other illegal acts. Where lawyers and paralegals choose to use virtual commissioning, they must be particularly alert to these red flags in order to ensure that they are not assisting, or being reckless in respect of any illegal activity.