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Liaison Committee with the Federal Court of Appeal and Federal Court  
Meeting held at 30 McGill Street in Montréal, on January 26, 2017, at 5 p.m.

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Present:  
For the Federal Court of Appeal:  
The Honourable  
Marc Noël  
Chantal Carbonneau

For the Federal Court:  
The Honourable  
Paul S. Crampton  
The Honourable Jocelyne Gagné  
The Honourable George R. Locke  
The Honourable Luc Martineau  
The Honourable  
Michel M. J. Shore  
Richard Morneau, Prothonotary  
Sylvia MacKenzie

For the Courts Administration Service:  
Daniel Gosselin, Chief Administrator  
Nancy Deslauriers  
Martine Daoust

Present for the Montréal Bar:  
Francisco Couto, Chair  
Magali Fournier  
Emma Lambert  
Pierre Lamothe  
Joanie Lapalme  
Claudia Andrea Molina  
Felipe Morales  
Alexandra Steele  
Michel Claude Synnott

Also present:  
Jean Michel Desgagnés, who recorded the deliberations.

Absent:  
Michael N. Bergman  
Peter Shams

1. OPENING AND ADOPTION OF THE AGENDA

The Chair declared the meeting open at 5 p.m.

The agenda was adopted as presented.

2. WELCOME AND INTRODUCTIONS

The Chair welcomed the representatives of the Judiciary, the Bar and the CAS and emphasized that the objective of the Liaison Committee is to create a forum for discussion between the Montréal Bar and the Federal Courts.

All of the participants introduced themselves. The Judiciary highlighted the importance of the Committee and said it was proud to be a part of it.

3. ADOPTION OF THE MINUTES OF THE MEETING ON MARCH 7, 2016

The minutes were adopted as written.

4. FEDERAL COURTS ACTIVITIES

4.1 Report by the Honourable Marc Noël

2016 was a landmark year for the Federal Court of Appeal, which rendered 632 judgments. Of all these judgments, 270 appeals originated from the Federal Court, 173 from the Tax Court of Canada and 142 from other federal courts. According to Chief Justice Noël, there is a discrepancy between the use of the Federal Courts in Quebec and in the other provinces. Quebec represents 25% of Canada's population, but only one sixth of Federal Court of Appeal judgments originate from Quebec. According to the Committee members, this situation

can be explained by the unfamiliarity with the Federal Courts of some counsel who initiate proceedings before the Superior Court and by some areas of practice that are less common in Montréal.<sup>1</sup> Counsel who do not typically plead cases before the Federal Courts will not seek to do so since the rules of procedure are different. Chief Justice Crampton said that the situation may also be attributable to the greater number of head offices in Toronto than in Montréal and to the development of intellectual property in Toronto.

Chief Justice Noël announced that Justice Judith Woods was appointed to the Federal Court of Appeal in June 2016 after 15 years of experience in the Tax Court of Canada. Justice Eleanor Dawson became a supernumerary judge on January 14. Since there are no longer any full-time justices from western Canada, a message had been sent to the Minister of Justice to make an appointment that would reflect the country's reality.

Chief Justice Noël concluded by discussing the installation of a Federal Court of Appeal hearing recording system in January 2017 that gives the parties access to the recordings.

#### 4.2 Report by the Honourable Paul S. Crampton

The Chief Justice gave his report using the presentation attached to these minutes. Members are invited to consult it.

In addition to the information in the presentation, the Chief Justice said that the Minister of Justice had given her support to hire an Associate Chief Justice. We must await the budget speech to evaluate what will be done. The situation is similar with regard to court modernization and funding for translation.

Lastly, the Chief Justice explained that a court directive enables a party to request a date very soon after filing proceedings. As a result, the judge is quickly involved with the parties, which is ideal and encouraged by the Court.

#### 4.3 Report by the Chief Administrator

The Chief Administrator began by stating that he had been receiving positive comments about the Registry. However, there are more cases, and the staff must deal with a growing number of unrepresented parties.

The Chief Administrator went on to explain that there can be a delay of up to 18 months to translate Federal Courts decisions, which has been the topic of many discussions with the Minister of Justice and is of concern to the Commissioner of Official Languages of Canada. Not enough funds are allocated to translation, and delays are increasing by the year. Therefore, it must be hoped that funds will be allocated in the next federal budget to address this situation.

Lastly, the Committee members were informed that the locations of the Federal Courts in Québec will be relocated to 150 René-Lévesque Blvd. West in fall 2017. As for the Montréal offices, the Chief Administrator told the Committee members that this matter is being handled by Public Services and Procurement Canada (PSPC) and that the latest news was that PSPC would evaluate three options: to remain at 30 McGill Street, to move to 360 McGill Street or to construct a new building in the perimeter preapproved by the Chief Justices. In the meantime, the Federal Courts will remain at 30 McGill until 2022.

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<sup>1</sup> These refer primarily to notices of compliance in accordance with the Patented Medicines Regulations.

## 5. FOLLOW-UP ON PREVIOUS MEETINGS

### 5.1 Digital transition

#### 5.1.1 Funding for digital transition

There had been a lot of progress in this area. The Federal Courts are using better equipment, which makes the infrastructure more robust. For a number of years, the courts had been requesting funding for the digital transition in the amount of \$25 million over five years. The courts hope that by March 2018 there will be an internal solution that allows for e-filing. In the meantime, the courts have two files being carried out entirely electronically as a pilot project. The project has been very successful, but the platform cannot yet be extended to other cases. Nevertheless, the courts will be able to take inspiration from this to move toward a paperless court.

#### 5.1.2 Virtual general appeal of cases

The Federal Courts are actively working on this project. Internal tests should begin in June 2017. Subsequently, they will try to make everything available to counsel so that they can enter their availabilities and schedule hearings. The system is expected to be fully functional within two years.

### 5.2 Access to Justice

#### 5.2.1 Formality at the Federal Courts Registry in Montréal

The Committee members mentioned that the Registry staff are somewhat formal. The Federal Courts explained that the Registry acts in accordance with existing directives for a reason. Things that may seem trivial to counsel sometimes cause people to commit abuse that can be costly to the government. However, when counsel must file a document that is not compliant and cannot change it within a reasonable time frame, they should insist on filing it anyway and ask a judge to issue a directive to this effect. In other cases, counsel may still file everything with their colleague's consent. According to the courts, the situation of counsel should not be compared to that of unrepresented parties. When the latter do not comply with a rule of procedure, the State will sometimes consent to the document or procedure being filed to enable citizens to exercise their rights.

Regardless, the Federal Courts must ensure that all parties are treated in the same manner across the country. Counsel who practise nationally have observed that not all Registries apply the directives with the same formality. Perhaps the Montréal Registry has more time to consider the matter than the Toronto Registry. The representatives of the Federal Courts would discuss the topic nationally to ensure that everything is applied consistently.

#### 5.2.2 Deadline imposed in Rule 369(3)

The rules on motions in writing state that "[a] moving party may serve and file written representations in reply within four days after being served with a respondent's record. . ."<sup>2</sup> The Committee members considered the time limit of four days to be rather short. The representatives of the Federal Courts stated that if the time limit were longer, the parties would divide their file and use the reply to file their motion. A simple letter can be sent to the Registry to have the time extended.

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<sup>2</sup> Subsection 369(3) of the Federal Courts Rules.

## 6. NOTICE TO PARTIES AND MEMBERS OF THE LEGAL PROFESSION

### 6.1 Retention schedule, section 23.1 of the Federal Courts Rules

As the Superior Court of archives, the Federal Court must ensure that the documents required for the execution of its judicial tasks are retained. The historical approach, which consisted of keeping all documents in "perpetuity," has resulted in growing archiving expenses for the retention of several types of court records that are never consulted again once the proceedings have concluded. There is not yet any official position on this topic, but reflection has begun with regard to permitting the destruction of certain types of documents in Court records. The members of the Montréal Bar suggested looking into what is done at the Superior Court of Quebec, where one year after the judgment, the parties may collect the evidence. Otherwise, the Registry may destroy it.

## 7. TOPIC(S) RAISED BY COUNSEL

### 7.1 Amendments to the Federal Courts Rules

#### 7.1.1 Rules 70 and 348 – Electronic version of precedents in books of authorities

The proposed amendment would enable parties to file only the "relevant excerpts" (for example, one or two pages) of the precedent contained in an electronic database that the public may consult free of charge and that contains most of the case law cited by the Federal Court and the Federal Court of Appeal. The Committee members asked about the name of the electronic database that should be used. The representatives of the Federal Courts stated that no online search tool had been named as such, but that it is necessary to comply with the criteria set out in the rules (once they are adopted and in effect), including that concerning free access, in order to make it easy for parties representing themselves to obtain the full decision to consider, as needed, the excerpts in light of their situation without having to pay a fee.

#### 7.1.2 Rule 348 – Amendment to the time granted for filing a book of authorities in appeal

The proposed amendment would require parties to file their book of authorities at the same time as filing their application for a hearing (meaning, before the hearing date is scheduled), that is, within 20 days of receiving service of the respondent's memorandum. This way, the Court would have the book of authorities at its disposal sufficiently in advance to prepare to hear the appeal. However, the Committee members expressed concern about such a short time frame for filing both the application for a hearing and the book of authorities. They considered it necessary to discuss this time limit and determine whether it would be possible to extend it, for example by allowing books of authorities to be filed within 45 days of the filing of the respondent's memorandum. The representatives of the Federal Courts invited the Committee members to submit the suggestion in writing to the rules committee so that it could analyze it.

#### 7.1.3 Rule 152 – Requirement for a party to file a public version of a document from which the confidential information has been redacted

The proposed amendment to Rule 152 would require a party, for a document filed as confidential in accordance with a Court order (under Rule 151), to file a public version of the document, in which the information treated as confidential has been redacted, as well as a statement from their counsel (or an affidavit from the party) confirming that the order has been reviewed and that only the information that must be treated as confidential pursuant to the Court order has been redacted from the public version of the document. However, this amendment is problematic for certain areas of practice, such as intellectual property, where the costs could be

enormous. Instead of filing a redacted version of confidential documents, the members proposed considering the possibility of describing the documents, without filing them. The representatives of the Federal Courts stated that this rule does not apply to sealing and confidentiality orders, but rather only when a document is filed with the Court. They invited the Committee members to submit the question in writing to the rules committee.

7.2 Relocation and security for the offices at 30 McGill Street

This topic was discussed in item 4.3.

8. 2017 SPRING CONFERENCE

8.1 Date

Follow-up would be done with Ms. Carbonneau and Ms. MacKenzie to schedule the conference date.

8.2 Topics

The members of the Montréal Bar suggested opting for a town hall meeting format this year, where the registered members could pose questions of interest to the Federal Courts and thus establish a dialogue with its representatives. The members considered this to be particularly appropriate given the direction taken in the recent proposed amendments to the rules. Of course, questions could be prepared in advance to help the activity run smoothly. In this regard, the Montréal Bar could ask the members who register to send their questions with their registration. The conference would be held at a location outside the Federal Courts to make it more casual. The representatives of the Federal Courts thought this was an excellent idea.

9. VARIA- NIL

10. ADJOURNMENT

The Chair thanked the members and adjourned the meeting at 7 p.m.