

BENCH AND CANADIAN BAR ASSOCIATION
LIAISON COMMITTEE

MINUTES OF MEETING

THURSDAY, JUNE 25, 2009 AT
10:30 A.M.

BOARDROOM
90 SPARKS STREET
10TH FLOOR

In attendance:

Chief Justice Richard
Chief Justice Lutfy
Justice Sharlow
Justice Pelletier
Justice Ryer
Justice Lemieux
Justice Heneghan
Justice O'Reilly
Justice Phelan
Prothonotary Aronovitch
Prothonotary Tabib
Mr. Simon Barker
Ms. Kerri Froc
Mr. Brian Evernden
Mr. Peter Grant
Mr. Mario Bellissimo
Mr. Martin Masse
Ms. Susan Beaubien
Mr. Raymond Guenette
Mr. Guy Joubert

Regrets:

Justice Létourneau
Justice Sexton
Guy Dufort
Wilfred Lefebvre

Recording Secretaries:

Mrs. Chantelle Bowers, Executive Officer, Federal Court of Appeal
Mr. Andrew Baumberg, Executive Officer, Federal Court

1. Opening Remarks

The Honourable John D. Richard, Chief Justice of the Federal Court of Appeal thanks the members of the Bench and Bar for their involvement and their participation in this committee, which helps ensure open communication between a committed bar and an independent judiciary.

The Honourable Allan Lutfy, Chief Justice of the Federal Court also thanks the members of the committee for their presence and thanks Chief Justice Richard for his work with the liaison committees over the years.

2. Opening Remarks

Mr. Guy Joubert, President of the Canadian Bar Association spoke on behalf of the CBA members in thanking Chief Justice Richard for his dedication and commitment to the courts and to the counsel appearing before them. He notes that Chief Justice Richard's commitment of open communication began during his tenure first as a judge of the Federal Court of Canada – Trial Division, then as Associate Chief Justice of the Federal Court of Canada, and as Chief Justice of the Federal Court of Canada, and finally as Chief Justice of the Federal Court of Appeal.

Mr. Guy Joubert offered a gift of appreciation to Chief Justice Richard on behalf of the CBA. Beautiful soapstone sculpture as well as a framed certificate as honorary member of the CBA.

3. Adoption of the Minutes (December 5, 2008)

Approved in principle, subject to a few minor corrections.

CBA ITEMS:

4. Specialized Liaison Group Updates

(a) Indigenous Bar – Aboriginal Law Bar

Peter Grant spoke on behalf of the Aboriginal Law Bar and provided an overview of the aboriginal law meeting in Victoria. They are working on guidelines that will provide tools for such matters as aboriginal practices and elders as witnesses. The Courts and the judiciary have been very open to this initiative and it has been a learning experience for everyone. Justice Lemieux also reported briefly on the guidelines regarding the examination of elders and how to ensure that they are treated with respect as witnesses.

Chief Justice Lutfy acknowledged the work of Justice Lemieux and Justice Phelan and other members of the judiciary.

(b) Immigration Law

Mario Bellissimo introduced himself and spoke on behalf of the immigration bar. He provided an overview of the conference in Whistler 2009. He mentioned that Chief Justice Lutfy and Justice Snider were actively involved in that conference.

He commented that leave applications continue to be dealt with in an expeditious manner, however, there is an expectation for a spike in cases soon.

Mr. Bellissimo also mentioned that the expanded list of authorities in immigration is well underway and he hopes to have something to the Court by the fall.

Finally, he reported that there will be a regional meeting of the immigration bar in September.

Chief Justice Lutfy offered congratulations to Mr. Bellissimo on his newly published book on inadmissibility and criminal law in immigration matters.

Chief Justice Lutfy noted the Immigration and Refugee Board backlog of 60,000 files. The Federal Court has set up a working group to review its practices and procedures in immigration and refugee matters.

c) Intellectual Property

Susan Beaubien spoke on behalf of the intellectual property bar. There was an annual meeting of the intellectual property bar on April 30th with many members of the Federal Court of Appeal and the Federal Court in attendance. There was a town hall and a continuing legal education component at the Hilton Lac Leamy.

She made reference to the presentation made by Chief Justice Black of the Federal Court of Australia at the Town Hall meeting and the fact that his presence was very much appreciated by members of the intellectual property bar.

There was also an interesting dialogue regarding the Federal Court's Practice Notice to the Parties and the Profession on streamlining complex litigation, which is applicable to all cases, not only to intellectual property matters.

Chief Justice Richard gave a luncheon speech during the continuing legal seminar that day on the topic of appellate advocacy in intellectual property cases.

There was also the Canadian Bar Association intellectual property judge's dinner at the Canadian Museum of Civilization on April 30th, whereby the following persons were honoured with special caricatures: Chief Justice Richard, Justice Décary, Justice Gibson and Mr. Alex Machlin.

(d) Maritime Law

Simon Barker spoke on behalf of the Maritime Law section. He provided a brief overview of their last meeting in Montreal and was appreciative of the presence of Justice Mactavish and her overview of expert witnesses in the Federal Court. Mr. Barker indicated that the maritime bar provided comments to the Federal Courts Rules Committee regarding the proposed changes to the expert witnesses' rules and that they continue to watch with interest the developments in this regard.

5. E-discovery and the Sedona principles (reference to the Federal Court)

Kerri Froc spoke on behalf of the civil litigation bar who manifested an interest in knowing whether the Federal Court will consider adopting some form of the Sedona principles regarding e-discovery. Justice Phelan replied that e-discovery is not yet before the Federal Court, although the Court does have an e-court system in place and is looking at various other manifestations. The Federal Court is also considering some common standards for the bar in this context.

6. The Supreme Court of Canada's privacy policy, restricting parties' ability to include personal information in court records

Kerri Froc queried on behalf of the CBA whether the Federal Courts were considering adopting a policy similar to what the Supreme Court of Canada has in regards to personal information.

Chief Justice Lutfy responded not at this time, but underscored the fact the Federal Court is very concerned about privacy issues. He would like to examine more fulsomely the process before the Immigration and Refugee Board where everything is confidential and private versus the public nature the

same file takes on before the Federal Court upon judicial review.

Justice O'Reilly is interested in the SCC Guidelines and will consider sharing and discussing them with the Federal Court's Communications Committee.

COURT ITEMS:

8. Federal Courts Rules Committee Update

Chief Justice Richard provided an update on the work of the Federal Courts Rules Committee with emphasis on the following three projects:

- (i) final publication of the summary judgment rules in Part II of the *Canada Gazette*;
- (ii) final publication of the minor amendment rules in Part II of the *Canada Gazette*; and
- (iii) pre-publication of the expert witnesses rules in Part I of the *Canada Gazette*.

9. Federal Court Update

Chief Justice Lutfy indicated that he felt that things were going fairly well at the Federal Court.

He commented that certain senior colleagues are concerned with the life of a statutory Court and its jurisdiction. The preference would be to have an open dialogue with the Department of Justice on the topic.

Chief Justice Lutfy asked Justice O'Reilly to speak about the Federal Court's initiative regarding public information.

As chairperson of the Federal Court's Communications Committee, Justice O'Reilly is concerned that we do not have a comprehensive policy regarding the admissibility of electronic aids in the courtrooms (*i.e.* blackberries and laptops to be permitted in the courtrooms). A policy will soon be posted on the Federal Court's website regarding open communications for members of the parliamentary press gallery and counsel alike.

10. Update from the Chief Administrator of the Courts Administration Service, Mr. Raymond Guenette

Mr. Guenette provided an overview of some initiatives of the Courts Administration Service. The main issue is that of consolidation of the Courts and the Service into the Thomas D'Arcy McGee (TDM) Building at 90 Sparks Street.

He indicated that there will also be a designated proceedings section in the TDM building with a planned completion for the spring of 2010. Eventually, the Registry will be located on the main floor of the TDM and this will facilitate access to the public.

Mr. Guenette also suggested that the CBA will be consulted on the Service's e-courtroom initiatives in the fall.

He mentioned that the move of information and records management over to Hull was completed successfully.

Finally, Mr. Guenette commented that the federal government has been supportive of the Services' initiatives overall although funding is always an ongoing challenge.

11. Next Meeting**12. Other (Mr. Simon Barker)**

Simon Barker offered several kind remarks on the occasion of Chief Justice Richard's retirement and made special reference to a case over which he had presided in the Irving Whale matter and for which Mr. Barker was counsel. Mr. Barker then offered Chief Justice Richard a piece of the Irving Whale barge as a special keepsake.

13. Closing Remarks

Chief Justice Richard and Chief Justice Lutfy thanked everyone for their participation.

Chief Justice Richard thanked the CBA again for their kind words regarding his retirement and he specifically thanked Mr. Joubert for his presentation, as well as Mr. Barker for his special gift.