

COURTS BENCH AND CANADIAN BAR ASSOCIATION
LIAISON COMMITTEE

MINUTES OF MEETING

FRIDAY, DECEMBER 4, 2009 AT
10:30 A.M.

BOARDROOM
90 SPARKS STREET
12TH FLOOR

In attendance:

From the Federal Court of Appeal (FCA) :

Chief Justice Pierre Blais
Justice Karen Sharlow
Ms. Chantelle Bowers, Executive Officer

From the Federal Court (FC) :

Chief Justice Allan Lutfy
Justice François Lemieux
Justice James O'Reilly
Ms. Claudine Léger, A/Executive Officer

From the Courts Administration Service (CAS): Mr. Raymond Guenette, Chief Administrator

From the Canadian Bar Association (CBA) :

Max Weder
Susan Beaubien
Simon Barker
Kerri Froc
Alain Préfontaine
Christian Monnin
Peter Grant
Mario Bellissimo
Martin Masse

Recording Secretary:

Ms. Claudine Léger, A/Executive Officer, Federal Court

1. and 2. Opening Remarks

Reserved for later in the meeting. It was determined that the Committee would deal with the CBA items first and provide updates from the various groups for the benefit of the new Chief Justice of the FCA.

Chief Justice Lutfy welcomed the new Chief Justice of the FCA, Chief Justice Blais, and introduced him to the members of the Committee.

3. Adoption of the Minutes (June 25, 2009)

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 second gathering of the Federal Court Aboriginal Law Bar Liaison Committee with Elders in October on elders' evidence.

The first meeting was held in May 2009. The group is grappling with how to treat elders' evidence with respect. This is very progressive on the part of the FC. It is an issue that other courts in the country are looking at. There are three groups involved in this initiative to develop Practice Guidelines: the CBA, the Indigenous Bar Association (IBA) and the FC.

Chief Justice Lutfy, Justices Lemieux, Mandamin and Phelan and Prothonotary Lafrenière were present.

Prothonotary Lafrenière is encouraging everyone to move forward on the development of Phase II Guidelines. One issue that has come up is the disclosure of experts' working papers (professional standards and issue of confidentiality).

Chief Justice Lutfy thanked Mr. Grant. He described the "toile de fond" of this initiative. The FC began the dialogue in 2005. There have been two intense meetings per year. One has been held when the IBA has its annual meeting and another in the spring before the CBA National Aboriginal Law Conference and Aboriginal Law Section meeting.

Chief Justice Lutfy thanked Kathy Ring for her dedication and her work. He asked Mr. Préfontaine to convey his thanks to Ms. Ring.

He indicated that the process started out with seven elders, none of them knew each other and they expressed themselves in a very special way. They told the Court how they felt.

Justice Lemieux indicated that the points of view were amalgamated and that the exercise was not to have a synthesis of the different points of view.

A Working Group of the Liaison Committee is working on Phase II of the Guidelines. Justice Mandamin is participating.

On another note, Chief Justice Lutfy pointed out that another development has been the emphasis of the Court on mediation. There is a tremendous thrust in that direction. There are large cases where Justice Lemieux has been mediating and it appears that there will be a resolution. It is an innovative way of dealing with complicated issues. He mentioned that we will see more and more of this kind of work.

Mr. Grant pointed out that there may be cases where the use of the Guidelines may go to the FCA. He asked how the FCA would approach these types of issues.

Chief Justice Blais praised the efforts of Justice Lemieux and others. He will share the issues with his colleagues.

(b) Immigration Law

Mario Bellissimo spoke on behalf of the immigration bar. He thanked the Court for its participation in the conference in May.

He mentioned the pilot project for e-service. It is not a practice that the Department of Justice (DOJ) will endorse. He hopes to have an update for the next conference which will be held in Halifax (May 2010).

He mentioned that he is working with the DOJ on expanding the list of authorities in immigration and hopes to bring forward a list of approximately 50 cases for the Court's consideration by mid-January.

He reported that there will be a joint submission (CBA-DOJ) to the Court by mid-January on scheduling deadlines within leave orders.

He mentioned that there are 62 000 claims pending before the IRB. There are four new members who started in November. There is a 6- month learning curve. There are 11 000 appeals pending before the IRB.

He mentioned that the CBA is monitoring Bill C-50 closely.

c) Intellectual Property

Susan Beaubien spoke on behalf of the intellectual property (IP) bar. There is an ongoing dialogue between the IP Bar and the Federal Courts. The IP Users Group is chaired by J. Hughes.

She reported that the proposed amendments to the expert evidence rules generated a fair bit of discussion. There is ongoing concern from the IP Bar. It will be making its submissions and will be looking at the issue.

Ms. Beaubien thanked both courts for their attendance in the annual IP Judges' Dinner held last April. The next dinner is scheduled for May 13, 2010 at the National Gallery in

Ottawa. There will be honorees. Last year, Justices Desjardins and Linden from the Federal Courts were honoured by the Bar upon their retirement. She asked whether other judges were retiring and asked to be advised for the next dinner.

She reported that the annual Town Hall meeting was a success thanks to J. Hughes' efforts and ongoing dialogue with the Bar. She pointed out that the IP National Executive would like the FCA to attend the Town Hall meeting. The next one is scheduled for May 13, 2010 at the Marriott Hotel in Ottawa. It is a "portes ouvertes" format. Approximately 50 to 60 lawyers are usually in attendance. It is usually held in the morning until noon. Last year, there was a tremendous turnout from the Courts.

(d) Maritime Law

Simon Barker spoke on behalf of the Maritime Law section. He reported that it has been a busy year for the maritime Bar. Maritime legislation has gone through the House of Commons.

He reported that the next meeting between the maritime Bar and the Federal Court will be in April 2010.

He mentioned that there are recent cases on cargo that have gone to the FCA.

He mentioned that there was a conference call last April concerning the admiralty list spearheaded by J. Harrington.

Mr. Barker mentioned the seminar in Montréal this year where J. Mactavish walked the Bar through the proposed amendments to the expert evidence rules.

He noted that the last biannual seminar with the FC was in 2004. He asked whether it would be time to reinstitute this initiative. Chief Justice Lutfy indicated that J. Harrington would be looking for a counterpart in the FCA with a view to having this seminar for sometime before the end of 2010. He also indicated that the Courts would be looking for a member of the Bar to be on that Committee.

COURT ITEMS:

7. Federal Court of Appeal Update

Chief Justice Blais thanked everyone for their kind comments. He reported that four judges have left the FCA this year. J. Dawson has been appointed. Two more judges will be appointed. There are two vacancies. He is hoping to get the appointments before the end of the year.

He reported that there was a meeting of FCA judges in November where the following issues were discussed: membership on liaison committees, the Rules, technology and training. The FCA tries to maintain its website. If the Bar has comments or suggestions in that regard, he asked that they let the FCA know.

J. Sharlow reported that at the judges' meeting in November, the Court nominated J.

Nadon as the representative for the FCA for maritime law. She also indicated that the joint maritime law committee now needs to find a representative from the Bar.

8. Rules Committee Update

Chief Justice Blais reported that we are waiting for approval by the governor in council and for final publication of the Summary Judgment and Summary Trial Rules in the *Canada Gazette*.

Ms. Bowers reported that the proposed amendments to the expert witness rules have been pre-published in Part I of the *Canada Gazette*. Additionally, she reported that the proposed amendments concerning procedural amendments have also been pre-published in Part I of the *Canada Gazette*.

The CBA has proposed two new members to the Rules Committee. The Court will get back to the CBA on the proposed names.

9. Federal Court Update

Chief Justice Lutfy asked Justice O'Reilly to report on the new FC Policy on Public and Media Access. J. O'Reilly updated what had been said at the last meeting of this Committee. He reported the Policy is about to be finalized and launched. He indicated that with the assistance of Mr. Guenette and after consultations with staff, it was determined that there were a few things that could be better expressed in the Policy and that has been done. It is a fairly generous policy. If problems are encountered, the Court will revisit the Policy. He provided the highlights of the Policy. He mentioned the case before J. Martineau during which a journalist from the Ottawa Citizen was permitted to "tweet" minute-by-minute of what was going on. No problems arose in that case.

He provided a brief history behind the initiative which had initially been proposed by the CAS for the four courts. J. O'Reilly indicated that he undertook to take on the initiative himself for the FC and then had a consultant help him. The product is what was achieved through that exercise. He indicated that it was the FC's hope that other courts will be inspired by the Policy and will develop their own or adopt guidelines in the same spirit. Chief Justice Blais acknowledged the Federal Court's initiative and committed to speak to his colleagues at the FCA as to whether or not a similar approach will be adopted by the FCA. He promised to follow-up at the next meeting of this Committee.

J. O'Reilly also reported that he was looking into the issue of a new gown on behalf of the FC which would bear the new Coat-of-Arms of the FC.

Chief Justice Lutfy mentioned the appointment of Justice Dawson to the FCA on November 27. On the same date, Paul Crampton, a senior partner at Oslers, was appointed to the FC.

He mentioned that he thought that an ongoing "dialogue table" should be set up to discuss the important issue of statutory courts. There should be a few meetings per year. He is trying to convince the DOJ. There should be something more punctual. For example, if a class action case is before the FC, the DOJ can "3rd party" a manufacturer

of a drug and the FC will lose jurisdiction over the case. It will go to the provincial Courts.

He mentioned that the issue will be discussed later this month and early next year. B. Strayer and Peter Hogg have been involved in discussions on the issue. The FC will be seeking the support of the CBA support. He indicated that John Sims wanted him to share this with the CBA. Colleagues in the FC are passionate about the Court's jurisdiction and would not want to lose it. A permanent table to discuss the issue transparently with members of the Bar should be set up.

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

Mr. Guenette provided an overview of some initiatives of the CAS. It is still proceeding with the business cases with respect to security, e-courtrooms and e-filing. The counter for the four courts will be situated on the ground floor of 90 Sparks Street and should be ready by March or beginning of April 2010.

He indicated that the 7th floor is being set up for designated proceedings.

He mentioned another business case for staff in registries across the country.

Mr. Barker asked Mr. Guenette about the identification for counsel. Mr. Guenette indicated that the issue would be discussed at the first meeting of the security committee in January.

Ms. Bowers indicated that in Ontario, lawyers could present their LSUC card to go through the scanning machine in a more rapid manner. This should apply across the country. Mr. Guenette indicated that counsel will have to have photo ID.

Mr. Grant stated that in Vancouver in February 2010, criminal trials will not be held because the office of the Sheriff will be affected to security for the Winter Olympics.

Chief Justice Blais indicated that the FCA would not be sitting in Vancouver during that time. The FC will be proceeding on a reduced schedule.

J. Lemieux indicated that the CAS in Vancouver has been in touch with him. If security issues arise, they will be able to deal with them.

11. Next Meeting

Mr. Barker to discuss the issue of a date in June 2010 with the CBA and to follow up.

12. Other

Nothing else was discussed.

13. Closing Remarks

Chief Justice Blais and Chief Justice Lutfy thanked everyone for their participation. Mr. Barker thanked both Courts.