

**BENCH AND CANADIAN BAR ASSOCIATION  
LIAISON COMMITTEE  
MINUTES OF MEETING  
Thursday, May 2<sup>nd</sup>, 2013**

**In attendance:**

**Chief Justice Blais**, Federal Court of Appeal

**Chief Justice Crampton**, Federal Court

**Justice Sharlow**, Federal Court of Appeal

**Justice Stratas**, Federal Court of Appeal

**Justice Shore**, Federal Court

**Justice Phelan**, Federal Court

**Prothonotary Aronovitch**, Federal Court

**Daniel Gosselin**, Chief Administrator

**Alain Le Gal**, Registrar, Federal Court of Appeal

**Manon Pitre**, Registrar, Federal Court

**Martin Masse**, Committee Chair (McMillan LLP)

**Susan Beaubien**, member, Intellectual Property Law representative (Macera & Jarzyna)

**Mario Bellissimo**, member – Immigration and Refugee Law representative (Bellissimo Law Group)

**Joel Nitikman**, member – Income Tax Law representative (Fraser Milner Casgrain LLP)

**David Demirkan**, member – Civil litigation representative (Canada Industrial Relations Board)

**Paul Harquail**, member – Maritime Law representative (Stewart McKelvey)

**Diane Soroka**, member – Aboriginal Law representative (Diane Soroka Barrister & Solicitor Inc.)

**Alain Préfontaine**, member - Department of Justice – Canada

**Kerri Froc**, staff lawyer Canadian Bar Association (CBA)

***Recording secretaries:***

**Marie-Claire Perrault**, Senior Counsel, Federal Court of Appeal

**Lucille Collard**, Counsel, Federal Court of Appeal

**Lucia Shatat**, Counsel, Federal Court

***Regrets:***

Justice Pelletier, Federal Court of Appeal

Justice Dawson, Federal Court of Appeal

Justice Heneghan, Federal Court

Justice O'Reilly, Federal Court

**1) and 2) Opening remarks**

Chief Justice Blais, Chief Justice Crampton and Martin Masse, Chair of the Committee, welcomed everyone and remarked on the usefulness of these meetings.

**3) Adoption of Agenda**

The agenda is adopted with the addition of 5e) Civil litigation.

**4) Adoption of minutes (November 2, 2012)**

Minutes adopted with a request that in the future the members of the CBA be identified with their liaison group.

## **5) Update – Specialized Liaison Groups**

### **a) Indigenous Bar – Aboriginal Law**

**Diane Soroka** – the members of this section met in Victoria April 10<sup>th</sup>, 2013. C.J. Crampton attended by phone and other judges were present. Alternate dispute resolution (ADR) is encouraged with First Nations, and it is hoped that they will be used in proceedings involving the Crown. The goal is to try to resolve issues informally rather than go to court. Advantages are to reduce costs, get people through judicial system and resolve disputes. Peter Grant gave the message that court staff at the Vancouver office are very helpful, and this is very appreciated.

### **b) Immigration and Refugee Law**

**Mario Bellissimo** – National CLE will take place May 9<sup>th</sup> to 11<sup>th</sup> in Montreal. The Federal Court and Federal Court of Appeal are well represented, including CAS.

The federal skilled workers case (Tabingo) was dismissed at Federal Court and has been appealed to the Federal Court of Appeal.

Refugee intake is down 60% since the coming into force of the new legislation in December 2012.

### **c) Intellectual Property**

**Susan Beaubien** – The annual IP day will be held May 23<sup>rd</sup>, 2013, with a Town Hall meeting in the morning and a CLE development program in the afternoon, followed by a dinner at the Canadian Museum of Civilization. Justice Létourneau, the late Justice Layden-Stevenson (in memoriam), and Mr. Hugues G. Richard will be honored.

IP users group – meeting at the end of May – there will be some turnover on that committee.

Prothonotary compensation – IP section made submissions to Special Advisor in addition to the CBA. Submissions are available on website:

[http://www.prothocomp.gc.ca/submission/initial\\_e.shtml](http://www.prothocomp.gc.ca/submission/initial_e.shtml)

**Prothonotary Aronovitch** – thanked the CBA and the IP Section for their submissions and for their vigorous and robust support. She also thanked Chief Justice Crampton for the excellent submissions that he made to the Special Advisor.

**C.J. Crampton** – The Federal Court is conducting a pilot project for trials over one week using the Competition Tribunal technology to have an electronic hearing.

### **c) Maritime Law**

**Paul Harquail** – The Bar has been made aware that amendments to the rules are being considered for the enforcement of domestic arbitral awards. The maritime law section is in favour of such amendment and will be following the proposal.

The International Convention on sale of foreign ships is at the stage of final draft, and Canada is finalizing its response. The last round of consultation was in Beijing, and the next one will be in Dublin at the end of September.

The Canadian Maritime Law Association (CMLA) is meeting in June in Toronto, and members of the bench are welcome to participate.

#### **d) Civil Litigation**

**David Demirkan** – the Rules subcommittee Report on Global review was circulated to the members, and no comments were received.

The CBA is aware of the challenge created with the increase of self represented litigants and is actively looking into the issue. It was discussed at the Envisioning Equal Justice Summit in Vancouver, and a report will be submitted at the annual meeting in Saskatoon. The CBA is trying to find ideas to address the issue.

**C.J. Crampton** – word of caution when advancing solutions that could be perceived by opposing parties as tipping the scale in favour of self represented litigants. The Bench would like to hear what the Bar has to say about this, based on experiences that could help deal with the issue.

**David Demirkan** – making the system more understandable using checklists and plain language is the general idea that is receiving approval.

**C.J. Blais** – in favour of a pragmatic approach. Acknowledged that one of the Rules subcommittees is also working on something for the Federal Court of Appeal that reiterates the importance of the perception.

#### **6) Section 171 of the *Income Tax Act***

**Joel Nitikman** – the Bar is concerned that the amendment to section 171 of the Act (as proposed by Bill C-60 (clause 18)) may create a problematic situation whereby one Tax Court trial could give rise to multiple appeals.

**C.J. Blais** – Indicated that while this may be new for the Tax Court, the Federal Court of Appeal already has provisions to deal with that kind of situation (ss. 106, 107 of the *Federal Courts Rules*). The Court has the ability to coordinate the procedures for separate determinations of claims and issues.

**J. Stratas** – Cases such as this have been dealt with, and the Court can on its own motion, or if a party brings a motion, consolidate issues where required.

#### **7) Timing and criteria for the release/publication of judgments**

**Susan Beaubien** – Brings the attention to the fact that some decisions do not appear to be available on the Federal Court website even when they have a neutral citation.

**C.J. Crampton** – Explained that normally a decision that has a neutral citation is a final decision, and it should be posted on the website. Some delay is possible. Decisions are translated in accordance with section 20 of the *Official Languages Act*.

Judges of the Court generally do not consider speaking orders or endorsements to have any precedential value, and they are not posted on the website. There may, however, be some exceptions (e.g. in case the judge believes that the decision should be posted).

Whereas most interlocutory orders do not have much jurisprudential significance, they are generally not posted on the website, unless they are full reasons for order and order.

**C.J. Blais** – Pointed out that decisions cannot be rendered simultaneously in both languages. Interlocutory decisions are posted if the judge decides it should be.

**Mario Bellissimo** – The distinction between speaking orders and endorsement is not clear to the Bar. Maybe it would assist to have a practice direction.

**J. Stratas** – The rules subcommittee on implementation is aware of the difficulty.

### **8) Rules on judgment translations**

This issue is postponed until the next meeting.

### **9) Federal Court of Appeal Update**

**C.J. Blais** – With the latest appointments of Justice Webb and Justice Near, there are currently no vacancies at the Court.

Appointment of members of the Bar to the Rules Committee is still pending.

Murielle Brazeau, Deputy Chief Administrator of CAS has been appointed chair of the new Social Security Tribunal.

The website of the Federal Court of Appeal is currently being reviewed for form and content.

The Court participates in 3 national judges committees: on security; on technology; and on accommodation. The objective on security is to remain accessible while ensuring safety.

The challenge of insufficient funds remains to improve our technology.

The Court will attend the Bench and Bar in Montreal and a conference on social media in October.

Statistically, the number of Federal Court of Appeal cases is lower and the decision making time is improving.

### **10) Federal Court Update**

**C.J. Crampton** – Appointment of 4 new judges: J. Roy, J. Annis, J. Strickland and J. McVeigh and one more appointment is coming up. New applications for judicial appointments are always welcome.

Amendments were made to the Rules, effective in February, that changed the date of General Sittings from Monday to Tuesday in Toronto, Montreal, and Vancouver. They also advanced the date by which motion records must be filed.

The new DARS (Digital Audio Recording System) has been put in place, and 95% of the staff has been trained across the country. The sensitivity of the machine makes confidentiality an issue to be kept in mind by counsel. The Court is looking into how to redact confidential information that is inadvertently disclosed during a court proceeding.

An in-house solution for e-filing was launched in March but is not designed to accommodate a large volume of documents, and we are looking to work with the DOJ and CRA to find a solution.

The Federal Court will have a reduced schedule for both general and special sittings from July 29 to August 9, 2013.

A fast track pilot project is being launched for certain types of immigration cases (i.e. JR's of decisions by visa officers). The project will be launched in Toronto soon, and a notice to the profession will be issued. It will help the Court to hear applications more quickly and help reduce backlog.

Pro bono: the Court will be arranging for organizations (local pro bono and legal aid) to leave their information at the Registry. The Court will train Registry staff to refer litigants to a list containing the coordinates of such organizations.

The Federal Court is working on practice directions dealing with adjournments and books of authorities as well as a protocol dealing with allegations of incompetence made in the context of an immigration proceeding. Any views on whether the protocol should be extended to other types of proceedings are welcomed.

### **11) Rules Committee Update**

**J. Stratas** – It is of great value to the Rules Committee to have members of the Bar. It is a busy Committee with 5 subcommittees.

The implementation subcommittee is made of 5 people responsible for implementing the 26 recommendations made by the Global Review Subcommittee in its report. The subcommittee has divided the task into 3 sections. First, the Rules amendments: 80% done on drafting and a legal text will be submitted to DOJ drafters for validation and clean up. These amendments incorporate policy principles such as the proportionality principle. The second section addresses practice directions to be developed in a dynamic format. The third section deals with access to justice that includes the development of a table of contents, the simplification of Rules where possible and web technology.

The feedback on the report has been positive, with one concern raised by the immigration bar regarding duty counsel. There may have been a misunderstanding; the intent was to have a list of recognized pro-bono counsel sources available for the public. A list was developed by some offices, but a general list for each Court location will be developed.

### **12) Update from the Chief Administrator**

**Daniel Gosselin** – With the departure of the Deputy Chief Administrator, a competition needs to be conducted to find a replacement. A few names have already been referred.

The advancement of technology is still a monetary challenge; user fees are not the solution as they will only generate a fraction of the funding required. The support of Government is essential, or other solutions need to be found.

Security Threat: Risk Assessment is undergoing and a report will be submitted at the end of June.

Montreal office: the lease will not be renewed so the Montreal office will need to be relocated in 2019.

The program integrity submission was tabled asking for 67M\$ over 5 years to address technology and accommodation needs. Unfortunately, no provision in that regard was made in the last budget.

### **13) Next meeting**

At a date to be determined in November 2013.

#### **14) Varia**

**J. Shore** – Executive member of the mediation committee. Recourse to mediation is encouraged. It helps with backlog and is not a loss of business.

#### **15) Closing Remarks**

Paul Harquail's and Diane Soroka's term will be up soon, and they will be seeking reappointment.

Martin Masse has been on the committee for 6 years, 3 years as Chair. He will not seek renewal, and he thanked all the Committee Members.