

BENCH AND CANADIAN BAR ASSOCIATION
LIAISON COMMITTEE

MINUTES OF MEETING

FRIDAY, JUNE 25, 2010 AT
10:30 A.M.

BOARDROOM
90 SPARKS STREET
10TH FLOOR

In attendance:

Chief Justice Blais, Federal Court of Appeal
Chief Justice Lutfy, Federal Court
Justice Heneghan, Federal Court
Justice Lemieux, Federal Court
Mrs. Suzanne Labbé, Acting Chief Administrator
Mrs. Murielle Brazeau, DCA- Registry Services
Chantelle Bowers, Executive Legal Officer to the Chief Justice of the Federal Court of Appeal
Claudine Léger, A/Executive Legal Officer to the Chief Justice of the Federal Court
Simon Barker, Oland & Company (Chair of the Federal Courts Bench and Bar Liaison Committee)
Susan Beaubien, Macera & Jarzyna
Martin Masse, Lang Michener
Mario Bellissimo, Bellissimo Law Group (*by teleconference*)
Christian Monnin, Heenan Blaikie
Max Weder, Borden Ladner Gervais
Alain Préfontaine, Civil Litigation Dept., DOJ
Danielle Lussier, Canadian Bar Association
Peter Grant, Grant & Associates

Regrets:

Justice Sexton
Justice Sharlow
Justice Pelletier
Justice O'Reilly
Justice Phelan
Prothonotary Aronovitch

Recording Secretaries:

Mrs. Chantelle Bowers, Executive Legal Officer, Federal Court of Appeal
Mrs. Claudine Léger, A/Executive Legal Officer, Federal Court

10 :30 – 10 :45 a.m. Informal exchange over coffee

10 h 45 – 12 h 00 Meeting**1. Opening Remarks**

Chief Justice Blais, thanked the members of the Bench and Bar for their participation in this committee, which helps ensure open communication between a committed bar and an independent judiciary. Chief Justice Lutfy also thanked the members of the committee for their presence.

2. Opening Remarks

Mr. Barker thanked Chief Justices Blais and Lutfy for opening the doors to the Bar. He finds these meetings extremely useful. This committee is a child prodigy of the CBA (Dating back to 1982). There are indeed many forums for the Bar to meet with the judiciary. Global meetings like this are very helpful in bringing larger matters forward to the courts, for example the Prothonotary compensation file that the CBA was able to assist with. The CBA appreciates having ongoing meetings like this twice a year, or whenever it is convenient.

3. Adoption of the Minutes (December 4, 2009)

Minutes adopted

CBA ITEMS:**4. Specialized Liaison Group Updates****(a) Indigenous Bar – Aboriginal Law Bar**

Mr. Grant spoke on behalf of the Aboriginal Law Bar, noting that there was an aboriginal law meeting at the beginning of June.

This is part of an ongoing dialogue between aboriginal elders and members of the Bar and the Judiciary. The item that was addressed in greatest detail was the admissibility of oral history in aboriginal litigation. The idea of having procedural guidelines for addressing oral history of elders is extremely well received. From talking with other judges, he feels that the Federal Court's initiative will guide other Courts' practices. In September there will be a follow-up with this initiative. Along with Chief Justice Lutfy and Justice Lemieux, Justice Mainville, Justice Hansen, Justice de Montigny, Justice Mandamin, Justice Phelan and Prothonotary Lafrenière have also been involved in this committee's work. Mr. Grant feels that it is appropriate to separate this initiative from the expert witnesses rule. He raised a question as to how oral histories/traditions work in the Case Management system.

Mr. Grant also spoke about the Specific Claims Tribunal legislation and directed his comments specifically to the Federal Court of Appeal. The tribunal is composed of superior court justices but s. 28 appeals come to the Federal Court of Appeal, as of right. This whole legislation was intended to address the tremendous backlog, but up until this point, there have been no appeals heard by the tribunal. The Federal Court of Appeal should be aware that it will be coming down the road sooner than later.

Chief Justice Blais commented that Justice Mainville has been appointed to the FCA, and he is aware of this legislation and this particular tribunal.

Chief Justice Lutfy added that members of the tribunal must be a member of a superior court, not necessarily a provincial superior court. If the government is interested in coming to look for a Federal Court judge, they would be open to this idea (Federal Court, of course, being a superior court). From the time of filing a claim, it must be addressed within a 3 year timeframe.

Justice Lemieux commented that the June meeting was important and positive in terms of developing the guidelines re: elders' testimony. At the end of the meeting, it was agreed that the Federal Court itself would be responsible for drafting the Guidelines. The Aboriginal Law Committee contributes immensely to the resolution of important matters. Another issue that came up was the application of the rules in terms of Judicial Review (rather than an action) vis-à-vis elder testimony.

(b) Immigration Law

Mr. Bellissimo introduced himself and spoke on behalf of the immigration bar.

He provided an overview of the Immigration Bar Annual Conference, which took place in Halifax, and added that there was a strong federal court presence (Chief Justice Lutfy, Justice Snider, and Justice Barnes, Federal Court, and Justice Dawson, Federal Court of Appeal).

He explained that the Immigration and Refugee Board's backlog continues, but they are getting it down to approximately 60,000 cases. Each board member is expected to deliver between 140-150 decisions per year. Refugee producing countries include: China, Nigeria, Haiti, St. Vincent, St. Lucia and Czech Rep., among others.

The Refugee Reform Bill is moving its way through the Senate. Among other major changes in the new legislation, the government's stated objective of a '1-year timeline for removal of failed refugee claimants' is receiving some resistance.

After reviewing approximately 2,500 leave applications, the CBA has put in a submission, re: unauthorized filings.

Mr. Bellissimo also indicated that there is now a common list of authorities containing 38 cases.

In terms of the timeline for Judicial Review guidelines, a new bill (C-35) was tabled re: consultants and selection criteria (due by July 2) for the immigration consultant group. It has been suggested that the Canadian Bar Association (Immigration Section) submit comments. The CBA's position is that unless the regulation has the power to properly discipline the individuals, then another regulatory scheme should be adopted.

Chief Justice Lutfy added that the Federal Court has a working group looking at Bill C-11 and the impact of a 1-year timeframe and its impact on Judicial Review applications.

On another topic, Mr. Bellissimo explained that the Citizenship Act legislation is not advancing. As with the immigration consultant bill, there will be working committees for the proposed changes to the Citizenship Act.

c) Intellectual Property

Ms. Beaubien noted that an IP Users Committee was founded a few years ago at the initiative of Justice Hughes. The last meeting was held in Ottawa on May 13, and prior to that, they had met in other cities. The Court wanted to consider 3 main areas:

(i) Notice of Compliance hearings

Ex: Infringement validity matters and how to streamline these issues, but the Bar found that this would be problematic, short of some legislative amendment.

(ii) Pleading requirements in patent cases

Ex: How to narrow issues at an early stage and particularize aspects of validity and infringement. Motions for particulars tend to be discouraged by the court. A working group is set up to look at this initiative.

(iii) Expert witness rules

Ex: The Court set up a meeting with the Bar in March regarding the new rules. There is still, however, some unease with these rules among the IP community.

Law Reform Initiatives in the IP Law Community

Town Hall - May 13th - The topic was how to better manage intellectual law proceedings. The meeting was well attended by both Courts, and Ms. Beaubien thanks them for their participation.

CLE Program: on May 13th - piggybacking these events together, with the I.P. Judges' Dinner, will continue to draw participants and allow for open dialogue between judges and practitioners.

IP Judges Dinner was held on May 13th at the National Art Gallery this year. The Honourable Alice Desjardins and the Honourable Allen Linden were honoured by the IP Bar.

Finally, the Intellectual Property section of the CBA is currently looking at updates to the *Canada Patent Act* and the new *Copyright Bill*.

Chief Justice Blais thanked the IP Bar and the Federal Court for involving the FCA in these initiatives.

Chief Justice Lutfy acknowledged Ms. Beaubien's leadership for the IP dinners as well as Justice Hughes' involvement. He also noted the Federal Court's initiatives set out in its Notice to the Profession on May 1, 2009. There is no reason why IP trials shouldn't be done within 2 years of a Statement of Claim, including having the judgment out within that timeframe.

(d) Maritime Law

Mr. Barker spoke on behalf of the Maritime Law section. The National Maritime Law Association Annual Meeting was held in Halifax this year on June 4-5, and a special thanks went out to Justice Heneghan for her participation.

He also discussed the Judges' Maritime Law Conference that is coming up on April 14-15th, 2011. Mr. Bob Jetté is working with Justice Harrington of the Federal Court and Justice Nadon of the Federal Court of Appeal on this initiative. The Maritime Bar wants to know what the Courts want to hear about, as this is meant for the judiciary (i.e. jurisdiction of the Maritime law in Canada). Ms. Bowers is to speak with Justice Nadon and Justice Harrington by way of follow up.

The Canadian Bar Association now has a Maritime Task Force, and Mr. Barker thanked Justice de Montigny (Federal Court) for his involvement as well as Justice Stratas (Federal Court of Appeal).

(e) Administrative Law

Mr. Masse spoke on behalf of the Administrative Law section. He spoke about the common book of authorities for administrative law with the leadership of Justice Zinn of the Federal Court. Justice Zinn has taken this initiative and suggests the involvement of Tom Brody and Sandy Graham (DOJ). Chief Justice Lutfy indicated that the Federal Court would be happy to work with them along with the CBA.

Justice Heneghan spoke about access to a common book of authorities in Court rooms and in chambers ex: *Khosa & Dunsmuir* decisions.

Chief Justice Lutfy replied that there is now a List of Authorities on the Federal Court website regarding Immigration, with Aboriginal Law to come shortly.

COURT ITEMS:

5. Federal Court of Appeal Update

Chief Justice Blais indicated that since our last meeting, Justice Stratas and Justice Mainville were appointed to the Federal Court of Appeal. A few judges left last year, so it's nice to have a full complement.

Chief Justice Blais also reported that since its last meeting, the FCA has modified its Policy on Media and Public access to be more in line with that of the Federal Court. He thanked the Federal Court and Justice O'Reilly for their leadership on this file.

6. Rules Committee Update

Chantelle Bowers circulated a hand-out outlining the status of the proposed amendments to the Rules. The hand-out is attached to these minutes.

7. Federal Court Update

Chief Justice Lutfy commented that there are some concerns with respect to what happened to the Court 40 years ago with the *Fuller* and *McNamara* decisions. The Federal Court is looking closely at the question of its statutory jurisdiction, and how to best make representations to the government. It will be interesting to see the outcome of cases such as *Grenier* before the Supreme Court of Canada.

Chief Justice Lutfy also spoke to the issue of Costs and Access to Justice. He indicated that lawyers must be ready to speak to the presiding judge regarding costs. Too much money is being spent on cost assessments.

On another matter, Chief Justice Lutfy commented that the Federal Court sat in Toronto this week despite the G8 meetings. As a matter of principle, it didn't change its sittings. He welcomed the support of CAS employees, and they moved their sittings to Seneca College instead of 180 Queen Street. Immigration lawyers were pleased to have the cases continue, and it all went well.

Finally, Chief Justice Lutfy indicated that candidates are presently being interviewed for the new position of Chief Administrator. Thanks to Mr. R.P. Guenette for his years of commitment, and to Ms. Labbé who has agreed to act as interim Chief Administrator.

8. Update from the Interim Chief Administrator of the Courts Administration Service, Mrs. Suzanne Labbé

Ms. Labbé thanked the Chief Justices for their support. She indicated that it will be business as usual during the transition period, working together with Senior Management. Regarding the question of Photo I.D. Cards, the same rules will now apply across all CAS facilities. Legal counsel must present their Bar Association card, along with photo identification, in order to accelerate security clearance.

9. Next Meeting

Next meeting will be in December 2010, and correspondence will be sent out in due course.

10. Other (Mr. Simon Barker)

Mr. Barker had a message to convey personally and on behalf of the CBA. They (CBA) would like to help the judiciary wherever possible.

Three members of this Committee are up for re-election:

- Mr. Grant (not standing for re-election)
- Mr. Masse (standing for re-election)
- Mr. Barker (not standing for re-election)

Mr. Barker took this opportunity to thank Mr. Grant for his time on this Committee.

Chief Justice Blais and Chief Justice Lutfy thanked Mr. Barker as well for his years of contribution on this liaison committee.

11. Closing Remarks

Chief Justice Blais and Chief Justice Lutfy thanked the participants and invited them to continue informal discussions over lunch.