



**FEDERAL COURT LABOUR LAW, HUMAN RIGHTS, PRIVACY AND
ACCESS REVIEW LIAISON GROUP**

MINUTES AND SUMMARY OF DECISIONS
Meeting of September 25, 2009

Present: Chief Justice Lutfy, Justice Zinn (Chair), Justice Mactavish, Justice de Montigny (via teleconference), Dougald Brown, Philippe Dufresne, Andrew Raven, Chris Rupar, Emily McCarthy, Josh Scheinert, Ben Perryman

Absent: Barbara A. McIsaac, Q.C., Mary J. Gleason

Subject	Discussion	Decisions/Action
1. Welcoming remarks of the Chief Justice	<p>Chief Justice Lutfy welcomed the attendees, and explained how working groups have been conducted in other practice areas such as intellectual property and admiralty law.</p> <p>The Chief Justice expressed the Court's flexibility in crafting the working group so as to make it most useful to all interested parties. For example, smaller working groups could be held in sub-categories of the larger working group.</p> <p>The Chief Justice then turned the meeting over to Justice Zinn to chair.</p>	
2. Are there others to whom an invitation ought to be extended?	<p>Mr. Raven expressed his endorsement of the working group concept in this area. He suggested that with respect to labour law, counsel for the Treasury Board of Canada ought to be invited and particular Harvey Newman and Richard Fader.</p> <p>Justice Mactavish suggested that private labour law counsel also be included, and suggested Tom Brady and Suzanne Thibault. Others suggested Lynn Harnden and Roy Heenan.</p> <p>Justice de Montigny stated that someone from the Office of the Privacy Commissioner should be invited, as well as Access to Information counsel, and suggested Steven Welchner.</p> <p>In response to the Chief Justice's question as to specific counsel from Quebec or Toronto, Renois Langlois, Marlys Edwards, and David Baker were</p>	Justice Zinn to extend invitation to some of these suggested participants for next meeting.

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	<p>suggested, as were the Montreal firms of Melancon Marceau (Claude Melancon) and Trudel Nadeau (Gaston Nadeau).</p> <p>Counsel for Air Canada, Fred Headon, and VIA Rail, John Campion were also suggested.</p>	
<p>3. Is the Court's scheduling of applications sufficiently timed to meet parties' requirements?</p>	<p>Multiple attendees expressed concern that the hearing date rarely matches those provided in the requisition, and that the Registry often calls, with short notice, and requests that alternate counsel be found to appear at the available date; counsel stated that substituting counsel at the last moment can have a negative impact on client relations.</p> <p>Mr. Brown suggested a web-based calendar of available hearing dates that counsel from both sides could select from.</p> <p>The Chief Justice explained the process of how a hearing requisition goes through before it reaches the Judicial Administrator, but expressed his concern that the Court was not as efficient as it could be when it came to scheduling. The Chief Justice stated that counsel could provide prospective dates 4 months forward if that was more convenient than only providing dates 3 months forward.</p> <p>A discussion was had as to whether a date for a judicial review hearing could be set at an earlier date; one option might be to have a teleconference between the parties and the Judicial Administrator; the Chief Justice conveyed that she was not likely to be on board with such a process, but stated that he would discuss this with her.</p> <p>Setting a date at a case management conference with a Prothonotary was also suggested.</p> <p>A discussion was had regarding at what date, in the judicial review litigation process, parties knew that they would be going to a hearing. There was some disagreement about when most cases settled, but there was general agreement that once both sides had filed their memoranda, settlement was unlikely, and the matter would proceed to a hearing.</p> <p>The possibility of a cooperative process between the parties to set a hearing date as soon as the notice of application was filed was discussed. This could be implemented through a practice direction, and would require the payment of the requisition fee, but could provide more flexibility for the parties. The Chief Justice reiterated that the Judicial Administrator would have concerns regarding this approach.</p> <p>Mr. Dufresne expressed the concern that a hearing</p>	<p>Chief Justice Lutfy to discuss with the Judicial Administrator the setting of dates for hearings.</p>

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	<p>date that was too expedited might pose problems for the Human Rights Commission given its intervenor status.</p> <p>Attendees expressed that their clients, particularly institutional clients, were generally fine with the length of time it took to complete the judicial review process, from the point of filing a notice to receiving a decision.</p>	
<p>4. Modernization of the Federal Court</p>	<p>The Chief Justice explained various steps that have been taken to modernize the Federal Court and make it function more efficiently.</p> <p>The Chief Justice described how cases are assigned to judges, and how the Court has sought to establish specialized panels of judges in certain areas that can be assigned a greater number of cases in these particular areas, and especially cases where the hearing is expected to go for one day or longer; the Chief Justice explained that this process was not meant to sacrifice diversity in judicial decision-making, especially in Charter cases.</p> <p>The Chief Justice expressed his desire to see the Federal Court become the court of first instance for all federal judicial review matters, and for an end to the direct avenue from certain Boards and Commission to the Federal Court of Appeal; the Chief Justice described the Court's efforts to have the Department of Justice establish a panel on jurisdictional issues of the Court since the process of convincing government of the need for changes was too lengthy.</p> <p>The Chief Justice explained the Court's attempts to increase E-filing, and canvassed the attendees as to why E-filing has not been taken up by the bar; Mr. Rupar explained that the Department of Justice was taking steps to analyze how the DOJ might implement E-filing on a nation-wide basis.</p> <p>The Chief Justice described the Court's Recorded Entries System, and stated that at some point the objective is to link directly from these entries to the relevant documents filed before the Court.</p>	
<p>5. Developing a standard book of judicial review authorities</p>	<p>A discussion was had on developing a common book of authorities for judicial review applications akin to the specialized book of authorities used in immigration cases, which would reduce the need to include frequently cited cases such as <i>Dunsmuir</i>.</p> <p>Justice de Montigny explained how parties before the Supreme Court of Canada do not need to include copies of cases that are included in the Supreme Court Reports; Justice de Montigny stated that there is no real need to include copies of Federal Court</p>	<p>Mr. Brown agreed to head this initiative.</p>

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	<p>cases that are all available on the Federal Court website.</p> <p>The attendees agreed to have junior counsel at their respective firms assist in developing a list of cases to be included in this common book of authorities.</p>	
6. Unrepresented respondents and pro bono counsel	<p>The Chief Justice expressed concern with individuals having success before tribunals (such as the Human Rights Tribunal) and then facing the prospect of representing themselves when institutional applicants seek judicial review of the tribunal decision; if there is no respondent or the respondent is self-represented then this poses problems for the Court.</p> <p>Justice Mactavish explained how she had approached Pro Bono Ontario to assist with this issue, but that Pro Bono Ontario had not carried the discussion forward.</p> <p>The possibility of posting a list of pro bono counsel on the Federal Court website was discussed, but concern was raised regarding whether the quality of lawyers on such a list would be seen as being endorsed by the Court.</p> <p>Mr. Raven stated that junior counsel at their firm could act on some of these cases, since his firm's pro bono policy already permitted such representation.</p>	Justice Mactavish stated that she would call Pro Bono Ontario again, and asked that attendees present also contact Pro Bono Ontario to move the issue forward.
7. Next steps	<p>It was agreed that the Liaison Group would meet again in six months.</p> <p>The meeting was adjourned.</p>	<p>Justice Zinn invited attendees to send further topics of discussion or questions to him by email.</p> <p>Justice Zinn to set dates for next meeting.</p>