



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

**MINUTES AND SUMMARY OF DECISIONS**  
Meeting of October 12, 2010

**Present:** Chief Justice Lutfy, Justice Zinn (Chair), Thomas Brady, Philippe Dufresne, Sandy Graham, Harvey A. Newman, Barbara A. McIsaac, Q.C., Andrew Raven, Christopher Rupar, Emily McCarthy, and Neil Wilson.

**Absent:** Justice de Montigny, Justice Mactavish, Dougald Brown, and Mary J. Gleason.

Subject	Discussion	Decisions/Action
1. Approval of Agenda	The agenda was approved without changes.	
2. Approval of Minutes from Last Meeting (March 8, 2009)	The minutes were approved without changes.	
3. Follow-up Items from Last Meeting	Issues from the last meeting to be discussed throughout meeting.	
4. Notice to the Profession Regarding Early Hearing Dates	<p>Chief Justice Lutfy noted that this issue was on the agenda when the Federal Court judges met in Perth, and that it was contentious. Some judges felt that it was not clear that the Notice to the Profession regarding early hearing dates would not simply be a reincarnation of expedited hearings. Accordingly, the issue was taken off the table at that time. However, the Notice is now completed and is going forward on a consensual basis with the support of the Court.</p> <p>Sandy Graham asked what the procedure would be if the nature of a case changes and parties find that deadlines cannot be met.</p> <p>Chief Justice Lutfy indicated that the appropriate course of action would be to send a letter to Ms. Calamo notifying the Court that the deadline could not be met. This would be done only exceptionally.</p>	Notice to the Profession regarding early hearing dates will be issued.
5. Common Book of Authorities	Justice Zinn introduced the list of cases that had been prepared and explained that it is a work in	Attendees will send Justice Zinn and Neil Wilson their

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	<p>progress, with anticipated additions and deletions. For example, <i>Slattery v. Canada (Human Rights Commission)</i>, [1994] F.C.J. No. 181 (T.D.), aff'd [1996] F.C.J. No. 385 (C.A.), would be added.</p> <p>Philippe Dufresne suggested that <i>Mercier v. Canada (Human Rights Commission)</i>, [1994] 3 F.C. 3 (C.A.), should be added. Andrew Raven suggested that <i>Dagg v. Canada (Minister of Finance)</i>, [1997] 2 S.C.R. 403, be included.</p> <p>Sandy Graham raised the issue of whether the Common Book of Authorities would only include cases relating to Labour Law, Human Rights, Privacy and Access or would be targeted more generally.</p> <p>Justice Zinn suggested that the Common Book would not be restricted to these areas.</p> <p>Barbara McIsaac, Q.C., suggested that the cases to be included in the Common Book should only be cases that are so well known that they are frequently cited by counsel. She noted that this the Ontario Divisional Court's approach.</p> <p>Chief Justice Lutfy thanked the attendees for their feedback and suggested that they visit the website and look at the current Common Book of Authorities for immigration. The Chief Justice noted that it normally takes time before counsel begin to use the practice tools the Court provides.</p> <p>Barbara McIsaac, Q.C., noted that the Divisional Court sends reminders to counsel regarding the Common Book, and suggested that this might be a possibility at the Federal Court.</p> <p>The issue of a general Common Book of Authorities for all areas, including immigration, was raised and the Chief Justice suggested that the immigration cases should be kept separate due to their specific focus. Justice Zinn concurred.</p> <p>The issue of whether Intellectual Property cases should be included was briefly canvassed. Attendees agreed this area should be kept separate and the Chief Justice noted that this area of the law is always changing.</p> <p>Andrew Raven suggested that the Common Book</p>	<p>suggestions for changes to the list and ideas on how many cases should be included.</p>

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	<p>should serve as notice to the profession that counsel should be familiar with the cases included in it.</p> <p>Barbara Mclsaac, Q.C., emphasized that the Common Book should not be complicated and stated that she did not believe sub-lists were necessary.</p> <p>Justice Zinn suggested one volume with different sections. The Chief Justice noted that this is the approach in the immigration law Common Book.</p> <p>Barbara Mclsaac, Q.C., again emphasized that there should be one list applicable to all non-immigration judicial reviews, and that the goal should be to prevent wasting time on reproduction.</p> <p>Andrew Raven noted that the draft list looks like most of the cases relate to labour law, human rights, privacy and access, and that including cases from other areas (such as maritime or aboriginal law) might cause the list to grow too long.</p> <p>Barbara Mclsaac, Q.C. suggested the list was already too long and that cases like <i>Blank v. Canada</i> should be removed as issues of solicitor-client privilege do not arise often.</p> <p>Thomas Brady suggested that the list should be kept short and should avoid providing “leading cases” because this might suggest the Court’s opinion on these cases. The cases listed should be those that every lawyer knows.</p> <p>Justice Zinn asked the attendees to send in feedback, which Neil Wilson will collate.</p> <p>Chief Justice Lutfy noted that Books of Authorities will soon be obsolete and expressed his view that the best way to proceed would be to have 5-8 general cases, and then further subsets.</p> <p>Barbara Mclsaac, Q.C., expressed reservations about subsets because subsets will not matter to practitioners. She again emphasized that only obviously important cases should be included and that the Court should be wary of commenting on what cases are leading cases.</p> <p>Chief Justice Lutfy questioned the wisdom of</p>	

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	<p>including privacy and access cases in the Common Book as the Court only hears 8-12 of these cases a year.</p> <p>Andrew Raven suggested that cases should be included even if the Court does not hear many cases in that area so long as the cases are consistently cited in the cases the Court does hear in that area.</p>	
<p>6. Electronic Filing of Documents</p>	<p>Justice Zinn explained that the issue here is whether counsel should be able to file a CD rather than hard copies of records. Justice Zinn confirmed that the public Registry offices are equipped with computers with CD-ROM drives. Justice Zinn identified two issues:</p> <ol style="list-style-type: none"> <li>1. Some judges are not comfortable dealing with electronic documents.</li> <li>2. The Court does not want to assume any additional costs.</li> </ol> <p>Justice Zinn noted that in many Intellectual Property cases parties create electronic documents, then produce hard copies of any pages they will be relying on prior to trial.</p> <p>Thomas Brady raised the example of a case he had involving hundreds of thousands of pages of records, and suggested that it should not be necessary to waste the Court's time with a motion when both parties are consenting to electronic filing. Sandy Graham suggested that Case Management can deal with this. Thomas Brady replied that a Practice Direction allowing parties to file electronically might be helpful.</p> <p>Chief Justice Lutfy explained that from the Court's perspective, the genius of the Federal Courts Rules is that they are both flexible and comprehensive. He explained that drafting Practice Directions is not as simple a task as it might seem, and that it would take much more time than simply going to Case Management.</p> <p>Emily McCarthy explained that there is currently a subcommittee aiming to remove roadblocks to electronic filing, and that Thomas Brady's letter regarding electronic filing has been forwarded to the subcommittee. She noted that the Rules Committee normally takes 2-3 years to implement changes.</p> <p>Justice Zinn noted that there is nothing preventing counsel from simply writing to the Case Management</p>	<p>No immediate action. This issue will be kept in mind as the Court considers moving towards electronic filing.</p>

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	Judge to request permission for electronic filing.	
7. New Issues	<p>Christopher Rupar asked for the Court's current position on whether a case must be filed in its entirety when counsel are only referring to a specific excerpt. Barbara McIsaac, Q.C. noted that this issue will be addressed by the Common Book of Authorities and Justice Zinn confirmed that if a case is included in the Common Book, it is not necessary to provide the whole case. Chief Justice Lufy noted that judges are wary of accepting excerpts from a case without understanding the entire factual context, and Justice Zinn concurred.</p> <p>The attendees briefly discussed the types of cases that will be coming before the Federal Court in the future and discussed ss. 18 and 28 of the <i>Federal Courts Act</i>.</p>	
8. Next Meeting	<p>Justice Zinn noted that the next meeting will be in approximately six months, but that no date will be set now.</p> <p>The meeting was adjourned.</p>	