



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

MINUTES AND SUMMARY OF DECISIONS

Meeting of September 27, 2013

Present: Justice Gleason (Chair), Justice Mactavish, Justice Bédard, Lucia Shatat, Andrew Raven, Philippe Dufresne, Thomas Brady, Patricia Kosseim, Sean Kelly.

Absent: Chief Justice Crampton, Justice de Montigny, Barbara McIsaac, Dougald Brown, Sandy Graham, Emily McCarthy, Nancy Bélanger.

Subject	Discussion	Decisions/Action
<p>1. Update on amendments to the <i>Federal Courts Rules</i></p>	<p>Ms. Lucia Shatat commenced by reviewing the recent amendments to the <i>Federal Courts Rules</i>, the most important of which changed the filing deadlines for motion materials and provided for alternate dates for General Sittings. Under the amendments, applicants' materials now must be filed three (3) clear days prior to the hearing of the motion and responding materials are due two (2) days before the motion. General Sittings for the hearing of motions have been moved from Tuesday to Wednesday in Ottawa and from Monday to Tuesday in Toronto, Montreal and Vancouver. The new provisions allow presiding Judges slightly more time to review materials prior to argument of the motion. Ms. Shatat advised that parties have been contacting the Registry for guidance as to how to count days under the new time periods and that the Q&A document, which is posted on the Court's website, has been updated in order to provide information in this regard.</p> <p>Ms. Shatat also provided a brief overview of the various amendments that have either been recently made or in the process of being contemplated.</p>	<p>Justice Gleason undertook to review this issue (potential amendment to Rule 7) with the appropriate member(s) of the Rules Committee and to advise as to whether or not this issue is being examined as a possible amendment to the Rules.</p>

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	<p>She noted first that the Subcommittee on Technology (which is a Subcommittee of the Rules Committee) had reviewed the Rules with a view to making amendments necessary to provide for electronic service and filing of documents. The issue is currently pending with the Department of Justice. It is anticipated that the draft amendments will be published shortly and that there will be a period for comments in respect of same.</p> <p>The Subcommittee on Global Review of the <i>Federal Courts Rules</i> published its report in October of last year, and it was adopted by the Rules Committee. The Report is available on the Court's website. It recommends several potential changes to the Rules, including introduction of the concept of proportionality and encompassing all practice directions in a single document.</p> <p>The Subcommittee of the Rules Committee chaired by Justice Rennie recently proposed a number of other amendments to the Rules, which include new deadlines for filing of Books of Authorities and requirements regarding highlighting of authorities and provision for a Notice of Intent to Defend, somewhat similar to the provisions contained in the <i>Ontario Rules of Practice</i>. These and other items are currently being discussed at the Rules Committee.</p> <p>Finally, Ms. Shatat advised that the Subcommittee of the Rules Committee on Enforcement had released a discussion paper on several potential amendments to the enforcement provisions contained in the Rules. The discussion paper is on the Court's website. She advised that interested parties were invited to submit comments by the end of September 2013.</p> <p>Mr. Raven raised the issue of the potential amendment to Rule 7, in order to provide parties, in appropriate cases, additional time to extend the filing deadlines on consent. He noted that, particularly in matters of national scope, it may be difficult for either the applicant or the respondent to file their materials within the times</p>	

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	<p>provided in the Rules, and the option of a consent extension equal to only half the length of the applicable deadline is often insufficient. He noted that at the previous meeting of the Committee this issue was raised, with a view to a potential amendment allowing the parties to consent to an extension equal to the length of the applicable deadline. Mr. Brady noted that so doing would avoid the necessity of multiple consent motions, which are currently routinely filed.</p>	
<p>2. Feedback on scheduling and other administrative issues</p>	<p>Several counsel expressed concern with the way in which judicial review applications are being scheduled, as counsel are asked to provide their available dates within the next ninety (90) days, but hearings, unless urgent, are invariably not scheduled within the three (3) month time frame. This, in turn, necessitates further canvassing of dates by the Judicial Administrator's office and often further delay. In addition, counsel may not be available on the dates available to the Court, but will have held several other dates within the ninety (90) day period. This issue was discussed at a previous Committee meeting, and a potential solution of seeking dates via way of a specially managed proceeding was suggested. Mr. Raven advised that proceeding in this fashion works well when the matter is an urgent one, and gave an example of a recent case that was scheduled on short notice with the cooperation of counsel and the Court. It was agreed, however, that seeking special dates on short notice should be reserved only for the truly urgent cases.</p>	<p>The members of the bar on the Committee undertook to prepare a short point-form document, outlining their concerns with scheduling of judicial review applications and proposed solutions. Justice Gleason will then discuss with the Judicial Administrator, and invite her to be present at the next Committee meeting, to further discuss this issue.</p>
<p>3. Consideration of replacement of Committee members and additional Committee members</p>	<p>All agreed that the membership of the Committee should be expanded to ensure that it is sufficiently representative of those firms who regularly appear on labour, employment, human rights, privacy and access to information matters before the Federal Court.</p>	<p>The members of the Committee from the bar will provide a list of names of potential additional Committee members, for consideration.</p>
<p>4. Common List of Authorities</p>	<p>All agreed that the Common List needs to be updated, in particular, to reflect several recent decisions on administrative law from the Supreme Court of Canada. Mr. Brady agreed to</p>	<p>Mr. Brady agreed to coordinate the update and asked members of the bar on the Committee to</p>

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	<p>coordinate the update and asked members of the bar on the Committee to forward their suggestions to him. He will then circulate a revised suggested common list of authorities. The consensus of the Committee was that there was value in having the list maintained as it is being used by counsel (which cuts down on cost and volume of materials filed). The list also provides information to those counsel and self-represented litigants who might not be familiar with the leading cases in the area.</p>	<p>forward their suggestions to them. He will then circulate a revised suggested common list of authorities.</p>
<p>5. Next meeting date</p>	<p>The next meeting is tentatively scheduled for May 30, 2014. All present at the meeting agreed to hold the date in their agenda. During that meeting committee members will canvass whether it is desirable that future meetings be held on a yearly or half-yearly basis.</p>	<p>Justice Gleason's judicial assistant will canvass other members of the Committee and the Judicial Administrator for availability May 30, 2014 and will send a confirming email if the date is available to the majority of Committee members.</p>
<p>6. Various</p>	<p>Mr. Brady raised the small point of the new Federal Court of Appeal website not being as functional as the old website because users can no longer obtain the status of a file before that Court but instead need to search the Federal Court websites to obtain this information.</p>	<p>This has been corrected and the websites of both Courts now allow users to obtain the status of proceedings before both Courts.</p>