Federal Court  Cour fédérale

**BENCH & BAR LIAISON COMMITTEE (CITIZENSHIP, IMMIGRATION & REFUGEE LAW)**
**April 12, 2018**

**MINUTES**

**Attendance:** Justice Diner (Chair), CJ Crampton, Justice Zinn, Justice Boswell, Justice St-Louis, Chantal Desloges / Laura Best (CBA), Nilufar Sadeghi (AQAADI), Deborah Drukarsh / Claire la Riche / Daniel Latulippe / Sandra Weafer (DOJ), Lobat Sadrehashemi / Anthony Navaneelan / Mitchell Goldberg (CARL), Jack Martin (RLA), Deborah Drukarsh, Mario Bellissimo, Marvin Moses, Michael Battista, Adrienne Smith, Claudia Molina, Caroline Perrier (Judicial Administrator), Patrick O'Neil (Registry), Andrew Baumberg (Secretary).

**1. Welcome**

Justice Diner noted that the main purpose of this meeting is to obtain feedback from Committee members to the three primary initiatives on the agenda, namely the draft Practice Guidelines and two pilot projects (e-WG and Settlement). Other agenda matters could be left for the in-person meeting next Friday due to today's time constraints. The various Practice Guidelines and pilot projects are being vetted by the Bar before they are put for review by the Court.

The Chief Justice noted the two recent judicial appointments [Justice Elizabeth Walker and Justice John Norris] – the Court is in relatively good shape as regards its caseload, in anticipation for an expected significant increase as the IRB, with additional funding, brings on new board members. As for statistics, there was a 10% increase in total filings compared with the previous year; and slight drop in number of leaves granted (1258 in 2016 and 1195 in 2017), but with the grant rate stable for perfected files (around 40%); there was an overall 45 – 47% grant rate for cases heard; there was a 10% drop in stay applications, though the grant rate is stable between 35 and 38%.

Jack Martin: *is the 45-47% grant rate including consents?*

Caroline Perrier responded that this is the rate for cases heard on the merits. Including consents, the rate is then of course higher.

**Approval of minutes of November 7, 2017 meeting.** Adoption was moved by Chantal Desloges and seconded by Mitchell Goldberg. Approved.

**2. New Items for Discussion**

**(i) Practice Guidelines for Citizenship, Immigration, and Refugee Law Proceedings**

Justice Diner noted that this Practice Guideline is an 'omnibus' framework for initial comment.

Daniel Latulippe expressed concern regarding scope of anonymization – does this include only judgments and orders and the docket, or also the certified tribunal record, parties' records, etc.?

Andrew Baumberg noted that the goal of this provision is meant to line up with the Rules Committee proposal i.e., to have a simplified procedure to request anonymization of documents prepared by the Court and Registry, with no obligation on parties to redact materials. He added that some additional work is needed on the current draft to fine-tune it.

Daniel Latulippe added that if anyone wants to see the file, they could then go to the Registry counter.

Andrew Baumberg agreed. A party would need to file a full Rule 151 motion to seal the file.

Chantal Desloges, Nilufar Sadeghi, and Michael Battista questioned the timing of the anonymization request. It should be in the Notice of Application – it needs clarification.

Andrew Baumberg agrees – this needs to be cleaned-up regarding placement of the request so as to correspond with the Rules Committee proposal.

Jack Martin will review the PG in the next week with CARL.
Mitch Goldberg suggests that anonymization request be in the originating Notice of Application so that confidentiality can be conserved from the beginning.
Justice Diner agrees.
Anthony Navaneelan – will style of cause be online before leave granted? This might defeat the purpose.
Andrew Baumberg responded that the Registry would enter the style of cause in the online index unless there is an Order of the Court.
Patrick O'Neil added that we can use "Jane / John Doe" in the style of cause pending adjudication of the request, but would need a Direction of the Court.
Justice Diner added that we need to balance the open Court principle with request for anonymity. This will need to be reviewed with the Court. The proposal is not to have blanket anonymity for all proceedings.
Anthony Navaneelan noted that this is being reviewed by the Executive – he will forward suggestions in the next couple days.
Justice Diner asked that comments be sent to the full Liaison Committee.
The Chief Justice noted that if you search CANLII, there is easier access, but can you search the docket?
Andrew Baumberg responded that there are programs to scrape the online docket.
Anthony Navaneelan confirmed that he is aware of examples of people scraping the docket to search for someone. If the docket is not confidential, then it is easy to find a confidential judgment.
The Chief Justice welcomed efforts by the bar to come up with a balanced proposal.
Daniel Latulippe suggested that we may see many AB v MCI cases.
Justice Diner agreed that this may eventually become a challenge.
The Chief Justice added that if this becomes wide-spread, people may request anonymity to avoid an adverse inference being drawn if they did not request anonymity. He underscored the importance of avoiding this and developing an approach that is proportionate to the risks that actually exist.

Claire le Riche then referred to the reference to requests for reconsideration: 2nd paragraph. The Minister's counsel should be CC'd on any letter to the Court so there is an opportunity to make submissions.
Anthony Navaneelan asked whether the Applicant still needs to file for an extension of time to file the perfected record.
Justice Diner: normally yes. If not opposed, an informal motion could probably be filed. The key issue is: parties must advise the court of expected delay in filing the perfected application; otherwise the court does not know and will dismiss the Application after the normal deadline.

**(ii) Adding a new party only for a motion for stay of deportation**
**NOT DISCUSSED.**

**3. Business Arising from Previous Meetings**
**(i) Schedule in leave granted orders**
Justice Diner noted that this is a minor amendment to the current template for leave Orders to provide flexibility regarding the last step, which was inadvertently left out.
No issues.

**(ii) Toronto pilot projects**

- **Settlement**

Claire le Riche raised a question how cases would be selected.
Justice Diner responded that the purpose is to reduce late drop-off of cases that cannot be backfilled. The idea is to pilot this proposal to see if it produces positive outcomes – so the Court can backfill and parties avoid wasting time. There is no limit on the type of case – simply any IMM case.
Claire le Riche referred to phrase "in cases to be selected by the Court."
Andrew Baumberg clarifies – there would not be a production order in every IMM case. There should be no impact on the workload for the IRB – the pilot would simply move the production Order up by 30 days, before leave is granted, so that by the time leave is granted, everyone has had a chance to review the CTR.
Claire le Riche added a suggestion to include discontinuances in the proposed form even if they are not a result of consent.
Justice Diner noted that unilateral discontinuances are not strictly a settlement. The focus of the project was always on settlement. If a party discontinues outside this scope, it is not clear that it fits in the policy framework, though there may not be any reason to exclude it. It might possibly skew the statistics.
Claire le Riche also recommended that we add a clause to *discourage* discontinuances more than 15 days after leave is granted. This will help with settlement.
Justice Diner added that we have two ways to classify situations when there is a discontinuance; we could add a third category.
Claire le Riche added a further concern at page 24 – there is an indication in the new draft Notice that parties should provide reasons for settlement; in the past, for departmental decisions, this was resolved solely by letter; the requirements breach solicitor-client privilege; finally, it is not clear why no notice of discontinuance would simply be filed according to the current practice. She will need to consult further with client.
The Chief Justice noted that the Court is split – for some, grounds must be provided to justify the Court overturning a tribunal decision. That is why the consent judgment template contains an option to include language to address that the Court is satisfied that either the Tribunal's decision was unreasonable or that the applicant's procedural fairness rights were breached.
Andrew Baumberg added that Ms. le Riche's concern may be strictly with departmental decisions, which do not require a court order. The proposal came initially from the private bar, which wanted more explanation on the record. The intent was not to establish a strict legal requirement to disclose the reasons for settlement.
Mario Bellissimo added that the proposal is to avoid repetitive litigation, where the same issue repeats itself if the new decision-maker is not advised of the previous error.
Claire le Riche reiterated that this would still raise solicitor-client issues.
Andrew Baumberg asked whether the settlement agreement might be put on the court record on a confidential basis. The key concern is not getting this information to the public, but rather to the departmental client.
Mitch Goldberg agreed. It is not sufficient for counsel to know the reasons for settlement, but for the new adjudicator / officer to know (e.g., that there was an error of law) before they re-determine the case. He has had cases where the Respondent agreed to provide reasons, but it is inconsistent.
Laura best added that it is not common practice in Vancouver for DOJ to confirm why they are consenting even for a request for a consent judgment.
Anthony Navaneelan noted that it is not uncommon in Toronto as well.
Mario Bellissimo: the thing here is not about it being public. A bare reference to a generic legal error does not help. If there is more substance to send to the officer, it might provide the officer better direction – this is the ultimate aim.

Claire le Riche responded that this is still covered by solicitor client privilege,
Sandra Weafer added that the client will know the detailed reasons.
Mario Bellissimo questioned whether this is the Ottawa client, or the new decision-maker overseas, for example.
Claire le Riche suggested that maybe this can be fixed by improved internal communications with the client.
Michael Battista suggested that the settlement pilot is a bold initiative, but it should not be delayed due to this one issue – perhaps remove this element from the pilot for now.
Chantal Desloges agrees.
Justice Diner added that this is also a proposal coming from Court – will need to review with court. He asked Clare le Riche if she could come back with acceptable language.
The Chief Justice noted that if they agree to provide basic language to satisfy the court, as well as some internal communication to satisfy Mario Bellissimo's concern, this should be sufficient.
Sandra Weafer suggested that a settlement proposal indicate that the 'case has been settled on the following ground of review' using language from s.18.1 etc.
The Chief Justice agreed that this may meet the needs of the court e.g., check a box that corresponds to one of the grounds for review set forth in s. 18.1(4). This will be discussed at the upcoming Court meeting.
Justice Diner invited language from DOJ to try to make this work - please provide this by April 20.
Regarding the offer of assistance in the settlement framework: the idea is simply to raise the option for those who don't know, even if it would be an exceptional case. We can water down language

- **E-Court working group**

Justice Diner indicated that the current draft is the result of considerable work by members of the sub-committee. Comments are welcome – send to Andrew Baumberg in writing by Tuesday.

**(iii) File Retention schedule**
NOT DISCUSSED

**(iv) Publication of Decisions update**
NOT DISCUSSED

**(v) Legal aid update**
NOT DISCUSSED

**(vi) Feedback on Practice Directions (informal motions / scheduling)**
NOT DISCUSSED

**(vii) Rules Committee Update**
NOT DISCUSSED

**4. Next Meetings**
(i) **April 20, 2018 from 5:15 – 6:15 p.m. EST (Quebec Room, The Westin Ottawa, with access by teleconference)**
Confirmed.

**(ii) Fall 2018 – to be confirmed**
NOT DISCUSSED