Federal Court  Cour fédérale

BENCH & BAR LIAISON COMMITTEE

(CITIZENSHIP, IMMIGRATION & REFUGEE LAW)

Friday, April 8, 2016 (Vancouver)

MINUTES

Attendance: Justice Robert Barnes (Chair), Justice Glennys McVeigh, Justice Alan Diner, Anita Merai-Schwartz, David Matas, Sandra Weafer, Tamra Thomson, Samuel Plett, Mitchell Goldberg, Barbara Jackman, Marvin Moses, Marshal Drukarsh, Jamil Dupont, Mario Bellissimo, Peter Edelmann, Gary Segal, Claudia Molina, Zool Suleman, Michael Battista, Adrienne Smith, Banafsheh Sokhansanj, François Paradis, Keith Reimer, David Cranton; **Teleconference:** Chief Justice Paul Crampton, Deborah Drukarsh, Claire le Riche, Michel Synnott, Andrew Baumberg; **Regrets:** Justice Russell Zinn, Justice Michael Phelan, Justice Michel Shore, Lorne Waldman, Lori Hendriks.

1. Welcome – Committee Chair

Justice Barnes expressed thanks to Deborah Drukarsh for her support – this is her last meeting. He then reviewed Court statistics: the number of IMM proceedings is down considerably. However, the number of stay applications is up (close to 400), with the overall grant rate at around 36%.

The Chief Justice noted that the backlog has been addressed, though leave rates are significantly higher and so the number of hearings is higher even with the drop in proceedings. The Court is scheduling within the "90-day window" across the country, with no double booking. Some hearing dates are being lost because there are no pending cases. He added that some cases fall off at the last minute. There was a request to the Department to look at cases sooner, to assess the possibility of settlement so that hearing spots can be backfilled. He noted that the Minister's public mandate letter prioritizes a new look at settlement options – there needs to be better approach to reduce wasted public resources (namely, scarce court time).

Deborah Drukarsh responded that the Department does its best to bring the matter to the client as soon as possible if there is possibility for settlement; however, it is the client who makes the call.

Justice Barnes noted recent and upcoming retirements: J. O'Keefe retired, J. Hansen retiring May 31, J. Beaudry retiring on June 12. The Court is waiting for appointment of the 6th prothonotary.

Chief Justice Crampton referred to a recent meeting with the Minister regarding institutional matters such as appointments – a judicial affairs advisor is soon to be appointed, after which the appointments will come through.

Marvin Moses raised an example of an issue that arose about a month ago: in Toronto, when you have a deferral request put in for removal, and then a stay motion is brought on an urgent basis, counsel often include both *mandamus* and *certiorari* as alternative remedies; this way, if a government decision is issued after the motion is filed, there is no need to amend the motion. However, the Registry has accepted this in some cases but not in others. For context, it is noted that this is a situation where the removal is "very imminent."

Justice Barnes asked if the practice is for the registry to send it up to the Court?

Marvin Moses said that in his case, he insisted that it go to the Court for direction after some discussion at the registry.

Action: The Chief Justice suggested that this be raised at the Court meeting; in the interim, there should be some research within the Court. Andrew Baumberg asked Marvin Moses to send the file number that was challenged;

2. Business Arising from Previous Meetings

(i) Practice Notice re hearing length

The Notice has been in place for some time now. No comments

(ii) Schedule within 'leave granted' Order

Flexibility is now written into Orders.

Mario Bellissimo noted that this seems to be working well.

Deborah Drukarsh added that she has limited but positive feedback – it works well.

(iii) Confidentiality issues

Justice Barnes noted that the Court is engaging the issue regarding personal identifiers. Are there any examples of confidentiality problems / issues?

Barbara Jackman suggested that it might be useful to develop a standard for redaction, especially for large documents.

Action: Mario Bellissimo volunteered to help.

The Court does occasionally raise the issue of confidentiality on its own initiative to ask for submissions from counsel.

(iv) Motions: stay of release from detention

Justice Barnes noted that the issue from the past meeting was that there were anecdotal examples of *ex parte* requests.

Mitch Goldberg mentioned that a few years ago, there were a number of *ex parte* decisions even though the party was represented; he has not heard of more recent examples.

Justice Barnes asked regarding the possibility of a request to the Immigration Division of the IRB to stay its decision temporarily.

Deborah Drukarsh responded that this was in minutes, but it does not currently represent Departmental policy to ask the IRB for such a stay.

Justice Barnes responded that it could be requested on a case by case basis as appropriate.

(v) Access to legal counsel for people in immigration detention

No update – insufficient time.

(vi) Potential for E-service on Department of Justice (CBA)

No update – insufficient time.

(vii) Practice Notice re: Publication of Court Decisions and Orders

The Chief Justice noted that the Court has decided to publish *all* final judgments, with no distinction to be made between precedential versus non-precedential decisions. This will not apply to interlocutory decisions, though, other than on an exceptional basis if the Court determines that the decision warrants translation and posting. For stay decisions, these are issued

on very short time-frames. If these were to be published, there would be additional delay. In most cases of stay decisions, there is no treatment of the detailed facts, but simply the key issues in a quick and direct way. Without the factual context, they are not particularly useful for citation.

David Matas noted that the problem is not so much stay decisions but rather Orders that are elaborate yet without neutral citation and not published. They should be available on the Federal Court web site and on the CANLII web site.

The Chief Justice noted that this appears to be an issue with respect to recital-type decisions that are "final", in the sense that they adjudicate on the merits of an application or action. Going forward, those decisions will be called "judgments", rather than "orders", and will be published with a neutral citation. This should address the concern.

Action: Deborah Drukarsh added that there were some cases cited at the last meeting. She will send the list to Andrew Baumberg.

Barbara Jackman added that for the open court principle, publication is not limited to matters of precedent. In provincial courts, everything is published except endorsements. However, for the Ontario Court of Appeal, even endorsements are published.

Justice Barnes asked for clarification regarding publication of consent decisions.

Barbara Jackman agreed: consent decisions don't have anything of note in them, so there is no need to publish them.

Marvin Moses asked whether 'grant rate' statistics are divided between in-land versus oversees.

Chief Justice Crampton said he doesn't have that level of detail, but is looking for further statistics in-house. If these can be obtained, they will be shared with the bar.

(viii) New Committee Priorities in 2016-17

- Security: no update – insufficient time.
- Paper 'burden': no update – insufficient time.

3. Federal Court Items

(i) Consent Judgments

Justice Barnes noted that part of the discussion within the Court about drafting judgments raised questions about the appropriate style for consent judgments: might it be possible to adopt a template for a consent judgment? This would allow the court to issue it in both languages right away. Comments / suggestions are welcome on a draft template that was circulated.

Marvin Moses noted that the final sentence regarding 'being sent back for redetermination' may need to be adjusted for situations where the law has changed in the interim. Otherwise the draft appears to be acceptable.

Justice McVeigh suggested that the draft consent judgment be filed electronically.

Mario Bellissimo added that it should say that it has been "set aside" or "quashed," but is otherwise acceptable.

Gary Segal added that if necessary, this could be altered in discussions with the Crown.

Action: Justice Barnes concluded that this will of course be open to appropriate amendments in special situations. He asked the Department to submit a standard consent template.

(ii) Certified questions – submissions at hearing

Justice Barnes noted that there is a preference to have submissions at the hearing.

David Matas replied that he always has 3 or 4 questions ready.

4. CBA / Department of Justice Items

(i) JR of decision (VISA): 15 or 60 days?

Mario Bellissimo said that this problem is still arising, regardless of the location of the applicant.

Justice Barnes always thought that if the client is overseas, then it is 60 days.

In the covering letter for the leave application, Mario Bellissimo indicates whether it is inland or overseas, given the different time-lines for each.

Justice Diner suggested some discussion in the Court and then a Practice Direction.

There followed some discussion regarding the classification issue: off-shore versus inland. A legislative fix may be needed, given that the overseas versus inland distinction does not appear to be relevant any more. A practice direction is needed in the interim.

Action: Justice Diner asked Mario Bellissimo to make a suggestion for consideration by the Court.

(ii) Electronic filing: '500-page limit': no update – insufficient time.

(iii) Introduction of video evidence in a judicial review application: no update – insufficient time.

(iv) Access to documents in a file that has been ordered confidential: no update – insufficient time.

5. Rules Committee Update

No update – insufficient time.

6. Next Meetings

Two meetings were proposed:

- a teleconference in the early Fall;
- an in-person meeting at the Immigration Law Summit in the late Fall.