Federal Court  Cour fédérale

BENCH AND BAR LIAISON COMMITTEE (IMMIGRATION & REFUGEE LAW)
Ottawa, Ontario
Friday, May 8, 2015

Minutes

Attendance: Chief Justice Crampton, Justice Barnes (Chair), Justice Zinn, Justice Diner, Michel Synnott, Michael Crane, Sandra Weafer, Peter Edelmann, Chantal Desloges, Lorne Waldman, Deborah Drukarsh, David Matas, Mario Bellissimo, Andrew Baumberg (Secretary), Patrick O'Neil, as well as numerous late arrivals.

1. Agenda & Minutes

(i) Welcome – Committee Chair

Justice Barnes noted that IMM files are down this year, a trend from 2013

Chief Justice Crampton indicated that the backlog in Toronto is significantly lower – the Court is able to schedule hearings right away within the 90 window everywhere except Toronto (2 months behind, whereas it was 10 months behind last year). The increased caseload levels will continue in Toronto until the backlog has been addressed. This is a one-time backlog of legacy cases – once stabilized, the court should be able to keep up to date given the current caseload.

2. Federal Court Items

(i) Committee's Working Priorities in 2015-16

Justice Barnes noted this new agenda item, based on the following considerations:

- the agenda is usually full but with insufficient time to discuss issues in depth
- there is limited time for in-person meetings at the CBA annual conference

What are the committee priorities for discussion in the year ahead? Options for discussion: a single 'long' teleconference in Fall; more frequent shorter teleconferences; a 2nd in-person meeting (is there another conference / event in the Fall that has sufficient Bar attendance?)

Justice Barnes asked committee members to think about working priorities – bigger picture items about the work of the Federal Court. These can be sent to the Committee Secretary (A. Baumberg).

Deborah Drukarsh noted that there is a late Fall immigration law summit by the Toronto Law Society.

Justice Diner added that it is November 9/10 this year.

Proposal: a possible Fall meeting in Toronto?

(ii) Identification of counsel by law society number in application

The idea was proposed by **Justice Barnes.**

Lorne Waldman responded that it is standard practice in provincial courts.

There was a suggestion for a Practice Direction followed by Rule change.

3. CBA / Department of Justice Items

(i) Electronic filing: 500-page limit

Insufficient time to address this agenda item.

(ii) Introduction of video evidence in a judicial review application

Insufficient time to address this agenda item.

(iii) Access to documents in a file that has been ordered confidential

Insufficient time to address this agenda item.

4. Business Arising from Previous Meetings

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

Lorne Waldman suggested a protocol for judicial review applications of detention review decisions. A draft protocol was sent to Deborah Drukarsh. He described cases that were addressed within 30 days.

Deborah Drukarsh raised a concern if counsel are not experienced or there is a self-represented litigant. They may not meet the time-frames. The 'protocol' could be shared as a best practice informally.

Peter Edelmann noted that there is pressure on the court to issue the decision within the 30-day window. Perhaps there could be an opt-in for an expedited process (similar to the fast-track IMM pilot). Is there really a mootness problem?

Justice de Montigny noted that in his experience, he has seized himself of the case and expedited the process on the merits as well.

Court's position: detention issues take precedence over other issues.

(ii) Court practice re hearing length

Justice Barnes asked whether the average hearing length should be 75 or 90 minutes.

Chief Justice Crampton noted that parties are usually done within 90 minutes, but less experienced practitioners come to court expecting to speak for 2 hours. The proposal is to issue a practice direction setting out a default of 90 minutes with a simplified process to ask for a little extra time (ie, up to 30 minutes).

Lorne Waldman noted that it is not likely that counsel will know, at leave stage, how much time they need, but they should know a little later on once the file has been prepared.

Chief Justice Crampton responded that the issue could be included within the leave order – to set a time frame for advising the court.

Marvin Moses noted that it is at the record stage that counsel should know how much is needed, not at the initial leave stage.

Mario Bellissimo asked if there is any flexibility after leave is granted.

Justice Barnes thinks that 90 minutes is closer to the default rather than 2 hours or 75 minutes; if he sees more complicated files at the leave stage, he advised the judicial administrator not to schedule 2 cases that day.

Deborah Drukarsh added that the Department has no way to know how much time is needed until after the applicant has filed the record; most cases are around 90 minutes. This is what is needed, and if less time is given, usually DOJ is the party that loses out time.

Mario Bellissimo noted that 90 minutes reflects the current reality, but what should counsel do for cases that need 4 hours?

Justice Barnes responded that if you know that you need an extra 30 minutes, call the court in advance so that the other case can be advised so that they won't have to wait.

Chief Justice Crampton responded that a Practice Direction is being developed: flag the issue in the leave application if possible, and the judge can address it in the leave order. Otherwise, it can be raised later via informal requests for small extensions or by motion for longer extensions. If necessary, the hearing might be split to the afternoon after the second morning case.

J. de Montigny asked if this is a regular problem. Most cases can be finished within 2 hours – it is exceptional for a case to require more than this.

Chief Justice Crampton concluded by noting that a Practice Direction will be issued soon.

(iii) Confidentiality issues

Insufficient time to address this agenda item.

(iv) Fast-track pilot project

The Chief Justice noted that there is insufficient uptake, so this project is to be cancelled.

Mario Bellissimo added that there was at least some side-benefit, as there were numerous settlements.

(v) Potential for E-service on Department of Justice (CBA)
Insufficient time to address this agenda item.

(vi) Publication of Court Orders
Insufficient time to address this agenda item.

(vii) Schedule within 'leave granted' Order
A joint proposal was received by the Court from Deborah Drukarsh and Mario Bellissimo, with an agreement as a general principle that "in the order granting leave, the Applicant and respondent should be given an equal number of days for submitting their respective Further Memoranda of Argument, if any. Should timelines be condensed, the parties should be given and equal number of days for filing further affidavits and submissions, and no less than 7 business days for either party. This is distinct from expedited proceedings, which will be addressed on an individual basis."
Deborah Drukarsh gave an update and requested a minimum number of business days for a response. The number of days should generally be equivalent, with no less than 7 business days.
Action: Andrew Baumberg proposed a call with Deborah Drukarsh and Mario Bellissimo with the Judicial Administrator.

5. Rules Committee Update
Insufficient time to address this agenda item.

6. Varia & Next Meeting
See discussion earlier in meeting re working agenda / meeting schedule.
Final comment from Bar: please replace table in Vancouver barrister's lounge.