

**BENCH & BAR LIAISON COMMITTEE (CITIZENSHIP, IMMIGRATION & REFUGEE LAW)****Tuesday, October 18, 2016****Teleconference****MINUTES**

Attendance: Chief Justice Crampton, Justice Diner (Chair), Justice Strickland, Justice Boswell, Justice McDonald, Justice St-Louis, Daniel Latulippe, Claire LeRiche, Sandra Weafer, Michael Battista, Adrienne Smith, Marvin Moses, Peter Edelman, Keven Wiener, Patrick O'Neil, Jean-Simon Schoenholz, Kate Teroux, Mitch Goldberg, David Matas, Claudia Molina, Mario Bellissimo. **Regrets:** Justice Shore, Justice Phelan, Justice Zinn, Justice Brown.

1. Welcome / Approval of April 8 minutes

Justice Diner noted that the purpose of the call is primarily housekeeping, and in particular, whether the committee should have a more formal mandate. Secondly, for engagement and continuity, it was proposed that there be formal representation for key Bar groups active in the area of immigration and refugee law. Mitch Goldberg moved to approve the minutes; seconded by David Matas.

2. Committee Mandate & Membership

Draft: "The Federal Court Immigration and Refugee Liaison Committee brings together representatives of the Federal Court, the Department of Justice (Canada), and representatives of the main bodies representing citizenship, immigration and refugee law lawyers (the Canadian Bar Association, RLA, AQAADI, and CARL) to provide a forum for dialogue, review litigation practice and rules, discuss potential efficiencies and improvements. Other organizations may be invited to attend meetings from time to time, including representatives of tribunals or line departments. Committee minutes, subject to any translation delays, will be regularly posted to the Federal Court website. Committee members, who will be assigned to two year terms, will be listed on the website. Finally, meeting schedules will be publicly posted, as meetings will be open to observers from the bar – at least for the two annual meetings that take place concurrently with the Annual Fall LSUC Update, and Spring CBA meetings (traditionally late in November, and April/May). The Committee will also aim to facilitate at least one informal social meet-and-greet between the bench and bar. The first of these will be hosted in conjunction with the Fall 2016 OBA CLE on September 21 in Toronto. A second traditionally happens in conjunction with the Annual CBA CLE, at least with judges who speak and/or attend that conference."

Justice Diner asked for comments.

Mitch Goldberg agrees with the idea of posting / formalizing the mandate and membership. He submits it would be good to widen the membership to include the Canadian Council of Refugees.

Michael Battista asked whether the proposal changes the committee structure.

Justice Diner responded that the respective groups would be responsible for designating a member and ensuring continuity. Whether we continued with *ad hoc* individual membership would be a matter for discussion. Past meetings have generally been open to the wider bar.

CJ Crampton noted that with the general CBA liaison committee, the engagement tends to be higher with formal representatives, which provides more continuity. The representatives take on a formal role to engage with their respective groups.

Mitch Goldberg agreed – if he attends as a representative of CARL, he would ensure a replacement if he could not attend.

Justice Diner noted that there would be the possibility of others attending even if not representing an association.

Justice Diner asked whether Claudia Molina represented AQAADI.

She responded that a new representative is needed.

Peter Edelman added that the RLA should also be included.

Mario Bellissimo noted that historically, the second meeting is held in conjunction with the CBA conference. Depending on the number of participants, it may be held more by teleconference. The revised mandate may suggest a teleconference meeting, or mixed in-person / phone meeting, if many Committee participants are not involved in the CBA.

Michael Battista asked for clarification regarding the number of representatives for each organization, and the length of each term.

Justice Diner responded that this has not yet been decided. This can perhaps be discussed at the next meeting once each organization has a chance to review the proposal, but it would probably be one or two members each.

Marvin Moses noted that the CBA has in the past sent representatives from each region of three broad regions.

Justice Diner noted that for November 23, it is acceptable for each region to send a representative.

Justice Diner suggested that the draft mandate be approved, subject to possible inclusion of CCR (if the other members agree).

Mitch Goldberg proposed that the November meeting alternate between Ontario and Quebec annually.

Sandra Weafer noted that B.C. has a December meeting which could also be included in the alternation.

The mandate was approved.

3. New Items for Discussion

(i) **Draft Notice – retention schedule** – Andrew Baumberg noted that this is a draft for consideration by the Bar and then comment at the next meeting. The goal is to complete consultation with the bar by the end of the year.

(ii) Adjournments & scheduling

Mario Bellissimo noted that if there is a conflict in scheduling, the registry typically requires a motion, which seems to be labour intensive.

Sandra Weafer and Daniel Latulippe noted that the Department agreed with proceeding by letter for scheduling. This is consistent with the recent court practice in leave granted orders, allowing parties to consent to a revised schedule.

Mario Bellissimo added that it is difficult to provide the court with all availability dates before the leave order, and if there is subsequently a conflict, it is necessary to provide very personal information about holidays and flights for family. This seems to be a different practice in Toronto compared with other cities.

Daniel Latulippe asked: Could the court call parties before leave is granted?

CJ Crampton responded that this would be complicated for the Court. He added that Phase I of an electronic scheduling project (which is internal) is planned for March 2017, and a later phase may eventually provide an external scheduling capability. He confirmed that parties cannot call on an ad hoc basis to re-schedule a matter if it is not possible to back-fill the date.

4. Business Arising from Previous Meetings

The follow-up items will be circulated in advance of the next meeting for review by the Bar.

Keven Wiener raised a point regarding judicial review applications of deferral decisions. By the time it gets to the hearing on the merits, the case is sometimes moot, but counsel do not turn their minds to the mootness issue. Oftentimes, the case is discontinued after considerable work within the Court to prepare for the hearing. This would be useful for counsel to look at earlier.

Justice Diner noted also the related consent judgment issue, which will be on the November list.

Stay of release from detention is also an on-going matter for discussion.

5. Next Meetings

(i) November 23 from 4:30 – 6 pm (Toronto)

(ii) June 9, 2017 (Toronto – CBA conference)