



**BENCH & BAR LIAISON COMMITTEE (CITIZENSHIP, IMMIGRATION & REFUGEE LAW)
November 23, 2016 (Toronto, ON)**

MINUTES

Attendance

Federal Court: Chief Justice Crampton, Justice Diner (Chair), Justice Zinn, Justice Shore;
Department of Justice: Daniel Latulippe, Claire Le Riche, Mr. Reimer;
AQAADI: Guillaume Cliche-Rivard;
CBA: Adrienne Smith, Chantal Desloges;
CARL: Mitch Goldberg, Lobat Sadrehashemi;
RLA: Raoul Boulakia, Jack Martin;
Courts Administration Service: Andrew Baumberg (Secretary), Jean-Simon Schoenholz;
Others: Marvin Moses.

1. Welcome / Approval of October 18 minutes

Justice Diner welcomed members of the Committee, noting its revised structure and membership. He added that the membership is now confirmed, with the one outstanding issue resolved (a proposal to allow for representation on the Committee by a non-lawyer association was recently withdrawn.)

ACTION: Andrew Baumberg to post the minutes, mandate, and membership in the next couple weeks.

Justice Diner then acknowledged the passing of Cecil Rotenberg, Q.C., paying tribute to his exemplary character and life-long work in the field of immigration and refugee law.

CJ Crampton spoke from his PPT deck (and asked that it be circulated after the meeting). He noted that the Court is on schedule for the 90-day window for leave decisions across the country, with final decisions issued on average within seven and a half months from filing. He added that applications are down significantly since last year. The leave grant rate is higher than in the time-frame of Prof. Rehaag's study, but a little lower than the last two years. For scheduling, the Court is requesting the bar to identify bilingual cases in a cover letter accompanying the request for Leave. For Montreal, bilingual judges are assigned as a matter of course. However, for other areas of the country, it would be helpful to have a "heads up" from counsel at the time the Leave application is made. Also, if the case needs more than the standard 90-minute hearing time, please advise the Court at that time. In the leave application, parties may also make a request, supported by submissions, for anonymization, as he noted that a rationale has to be provided, as these are not automatically granted, nor should we get to a point where they are seen as automatic. He noted that the citizenship revocation cases were divided into two groups, the first of which the government announced it would not be pursuing, and the second of which (fraud/misrepresentation) produced 8 lead cases with three common issues which Justice Gagne heard last week. Finally, he noted that the Court receives many requests from law faculties to conduct a hearing at the university; counsel are asked for their support to participate in such hearings at the law school rather than at the regular court building.

Justice Diner added that there can be some sensitive issues in cases – these should be flagged to the professor before confirming.

Minutes: approved by Adrienne Smith and seconded by Claire Le Riche.

2. Committee Mandate & Membership - Discussed above.

3. New Items for Discussion

(i) Draft Notice – retention schedule

Andrew Baumberg noted that the draft Notice was first circulated at the October 18 meeting for comment and will also be discussed at the general bar liaison committee with the CBA on December 9. The draft Notice is based on a 2015 amendment to the Rules (new Rule 23.1), providing for retention of Court files according to a set schedule. The Court cannot justify maintaining all documents in perpetuity – most are never used once the file is closed, and many files are discontinued / abandoned before reaching a full hearing on the merits. The Court is launching a 1st phase schedule that focusses on withdrawn / abandoned files, which for IMM files includes those that are not perfected.

CJ Crampton noted the full warehouse – the Court needs to find an efficient solution. He added that Phase I would focus only on files with an electronic docket.

Claire Le Riche noted the main concern that a minimal record be maintained to confirm the existence of the proceeding, even if the full paper record is not maintained.

Jack Martin noted a distinction between discontinued / withdrawn files and the other two categories. The discontinued / withdrawn cases often relate to settlements. In his view, it is preferable to keep these files longer than 2 years, particularly if the parties have a dispute over the settlement.

CJ Crampton asked how long the bar would recommend the court keep the file.

Chantal Desloges suggested that the discontinued category be removed completely from the project.

Raoul Boulaki added that it might be preferable instead to convert the file to digital format.

Jack Martin added that it is not just the outcome, but also the underlying record that may be needed.

Justice Shore recommended that in order to save storage space, the country condition documents be removed.

Andrew Baumberg responded that the Courts Administration Service (CAS) is not currently planning a triage of old files to remove only part of a file – the resources needed for manual sorting of thousands of files cost more than the cost of the space saved.

Raoul Boulakia asked whether digitization is an option.

Andrew Baumberg responded that CAS assessed the cost of large-scale digitization – however, it does not have the budget for the up-front costs, which are significant.

(ii) Adjournments & scheduling

Justice Diner summarized Mario Bellissimo's request for an informal process to re-schedule a hearing shortly after it is set down if the lawyer has a conflict. He noted that if there is an informal request on consent within a few days of the leave granted order, this may be workable for the Court.

Raoul Boulaki added that it would be helpful to be able to send a letter within a week of getting the Order.

Chantal Desloges asked why counsel could not be called before the case is scheduled.

CJ Crampton responded that the volume of cases is too high; he then also made reference to the current adjournment Notice.

Justice Diner mentioned the e-scheduling project as an option in the longer run.

CJ Crampton added that the first phase is internal, for 2017; there remain technical issues to launch an external component, but it could ultimately resolve these scheduling challenges and conflicts.

ACTION: the Chief Justice will bring the issue to the court for discussion and report at the next meeting.

(iii) Visibility of clocks in hearing rooms

The issue was raised by Claire Le Riche (Department of Justice), who had a request from a litigator as to whether there could be a clock behind where the presiding judge sits so that the litigator can see what time it is rather than turning around to see the clock at the back of the Courtroom.

CJ Crampton added that both the parties and the judge need to see a clock.

Some counsel added that in Vancouver and Montreal, the clocks are on the side. It may just be in a few offices where there is a problem.

ACTION: Andrew Baumberg to survey CAS offices regarding placement of clocks and then develop a proposal to address the request.

(iv) Protocol re allegations against counsel

Raoul Boulakia (RLA) suggested that the former counsel (against whom the allegations are made) be required to file an affidavit, so that if leave is granted, the counsel can be cross-examined. The current protocol protects former counsel, while assuming that all counsel are perfectly honest and diligent – if that were true, we would not need the protocol. He gave examples of cases where a basic reply can be used as cover for conduct that can not easily be challenged. Proposed change: written response must include an affidavit sworn by former counsel, unless one has already been filed.

Adrienne Smith added that there is a need for a time-line to ensure that the affidavit is filed in time.

Chantal Desloges raised a question regarding the authority to file the letter / affidavit.

There was some suggestion that the matter could go to the Court for a direction, but Justice Diner preferred that each file not go for a direction on a case-by-case basis, and that an amendment to the existing policy is the way to proceed.

CJ Crampton suggested this come back to the Court for review.

ACTION: review of the proposal by Justice Diner and Andrew Baumberg within the Court and then to report back to the Committee.

(v) Summer Recess 2017: July 31 - August 11

The ‘summer recess’ period was confirmed. An official notice will be issued in due course.

4. Business Arising from Previous Meetings

(i) Committee Priorities in 2016-17

• **Security**

Andrew Baumberg noted the proposal, agreed by the 4 Courts / CAS, of a single line for public and counsel to be screened to enter court buildings. The target launch is for Spring 2017.

• **Paper burden**

Andrew Baumberg provided background information regarding the existing e-filing system, which provides a simple way to file documents electronically, but which often simply transfers the printing burden to the registry, given that files still proceed to hearing on a paper record. Before there is an increase in e-filing, it is preferable to develop options for the hearing process to avoid the need for paper in every file. Furthermore, it is not efficient to require counsel to file paper copies of documents that they may have already scanned into electronic format, and then sometimes for the registry to scan these paper versions a second time for a judge who prefers an electronic copy. He asked for feedback from the bar concerning their practice: are most counsel still working in their offices primarily with an electronic version or a paper version?

Jack Martin responded that everything is electronic in his office.

Raoul Boulakia noted, though, that there are widely varying practices – some lawyers have small offices with limited means; although some materials are taken from internet and filed with the Board, others are available initially in print format.

Andrew Baumberg also referred to the Rules Committee’s proposed amendment regarding a ‘print exemption’ for online caselaw. As drafted, this would exempt parties from filing full paper copies of any caselaw that is available via a free, public database. It is expected that this will have a significant impact on counsel’s paper burden.

Chantal Desloges added that she recently circulated the Canada Gazette Part I notice within the bar.

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

There was no update on this issue from the Bar.

ACTION: Claire Le Riche (Department of Justice) and Chantal Desloges (CBA) volunteered to discuss this issue and then report back to the Committee.

ACTION: Justice Diner proposed to write to the proponents of agenda items who are not on the call to confirm that the issue is still of interest, as some of these agenda items had been carried over from previous meetings.

Justice Shore suggested that this committee send a note of condolence to Cecil Rotenberg's family to express how highly respected he was. His sense of advocacy was a model all round. He will be missed by the public and private bar. Justice Diner thanked Justice Shore. All agreed.

ACTION: Justice Diner to prepare a letter of condolence to Cecil Rotenberg's family.

(iii) Consent Judgments

ACTION: Justice Diner proposed that members circulate the current draft and then send comments to Andrew Baumberg within 2 weeks.

Daniel Latulippe suggested the addition of the words "the whole without costs" – "le tout sans frais."

Chantal Desloges noted the words "Mr. Justice", possibly an error?

Raoul Boulakia suggested the closing should be "to be re-determined by the decision-maker" rather than reference to "on the merits".

Justice Shore noted, though, that it might be a different decision maker and also suggested that it be "determined anew" or "considered anew" (equivalent to *de novo*).

Raoul Boulakia, though, stated a preference for the term "redetermined."

Chantal Desloges mentioned the current issue at the Refugee Appeal Division related to *de novo* review. As a result, it may be preferable to use "redetermined."

(vii) Notice of settlement discussions

The issue was very briefly raised by Justice Diner: how to avoid late drop-off of cases? Can there not be earlier flagging of settlement discussions? He noted the registry suggestion to phone counsel to ask regarding on-going settlement discussions.

Claire Le Riche noted she could circulate a reminder again, though sometimes there are timing issues with getting approval from the client to enter into discussions regarding settlement or narrowing of issues.

Justice Diner added that with the flexible schedule following the leave decision, there may be additional flexibility to trigger discussions with the parties.

Closing

Next meeting: June 9, 2017, during the CBA conference in Toronto, with teleconference access.

Justice Diner closed the meeting by noting that the Court will follow-up with all proponents regarding the remaining issues on the agenda. For example, he noted that the detention review issue remains an important topic.

Remaining Items

- Confidentiality issues
- Motions: stay of release from detention
- Access to counsel for people in detention
- E-service on Department of Justice
- Publication of Decisions
- Electronic filing: '500-page limit'
- Video evidence in a judicial review application
- Access to documents in confidential file
- Rules Committee Update