

BENCH & BAR LIAISON COMMITTEE (CITIZENSHIP, IMMIGRATION & REFUGEE LAW)
June 9, 2017
Toronto, Ontario

In person: Justice Diner (Chair), Chief Justice Crampton, Justice Zinn, Marshall Drukarsh, Mario Bellissimo, David Matas, Samuel Plett, Michael Battista, Adrienne Smith, Chantal Desloges, Diane Dagenais, Deborah Drukarsh, Claire le Riche, David Berger, Dalwinder Hayer, Kate Terroux, Mitch Goldberg, Lobat Sadrehashemi, Anthony Navaneelan, Cheryl Robinson, Pablo Iribarra, Laura Best, Jack Martin, Barbara Jackman, Adam Sadinsky, Christopher Collette, Peter Edelman.

Phone: Justice Brown, Justice Shore, Justice Elliott, Justice St-Louis, Daniel Latulippe, Sandra Weafer, Patrick O'Neil, Guillaume Cliché-Rivard, Andrew Baumberg (recording secretary).

1. Welcome / Approval of minutes of November 23rd, 2016 meeting.

Mitch Goldberg and Chantal Desloges adopted the minutes.

Justice Diner noted that all groups are now represented, with increased participation in recent meetings.

However, he noted that the meeting is only 1 hour – there is a need for longer meetings that are not sandwiched between conference events; i.e., a need for a half-day meeting to allow the committee fully to discuss agenda items. DOJ, CARL, CBA, RLA, and AQAADI representatives all agree.

The question was then posed as to when / where the meetings should be held.

Chantal Desloges suggested that it be close to the CBA conference. Mitch Goldberg noted that it would need to be the day before or after the conference.

Justice Diner suggested the Thursday afternoon before the conference starts.

Decision: There was general agreement to implement the longer meeting format in 2018, with a half-day meeting the Thursday afternoon before the CBA conference begins.

The Chief Justice welcomed members of the Committee and thanked them for their commitment.

He then provided some statistics regarding IMM proceedings: the grant rate is 22% of all cases, but 37% of perfected cases. There was a 9% reduction in 2016 of the total number of filings (one quarter being refugee and three quarters being non-refugee files). The Court is scheduling hearings across the country within 90 days. If the caseload increases, the Court may eventually go back to double-booking and afternoon hearings.

2. New Items for Discussion

(i) Informal requests for interlocutory relief

A draft Notice was circulated. CJ Crampton noted the Court's efforts to be more flexible.

Action: Justice Diner asked for comments by July 1.

(ii) Thin file pilot project

Andrew Baumberg noted the project is meant to reduce Registry resources by preparing only documents that are necessary for the hearing.

Justice Zinn noted a related Immigration Appeal Division initiative to produce electronic certified tribunal records (CTR) instead of print versions. There have been some initial discussion with the IRB, which is open to exploring the proposal, but there is also a need for input from the bar: *do they want to receive CTR electronically?* Initially, the goal is to explore this as a pilot project.

Barbara Jackman: "great idea" – we should encourage the IRB to send documents by email and to shift to an electronic record. Private bar representatives spend a huge amount of time converting paper documents to digital format, and often do not bring any paper to a hearing.

Marvin Moses agrees.

Justice Diner noted the IP bar regularly uses electronic documents, as well as a compendium of key excerpts. There is no reason why the immigration bar cannot also do this. It makes the hearing more efficient.

Mario Bellissimo asked about mechanics if each party wants to attach different parts of the record in their affidavits. At the reply stage, it would not be possible to attach a further affidavit.

CJ Crampton responded that the court is trying to move away from being a paper-based organisation, and there are judges who are willing to work entirely in electronic mode. The Court is moving ahead with a pilot for e-trials, which will reduce the amount of paper required, and also a significant efficiency gain which is in the client's interest. However, the court doesn't have resources to print all documents. The idea is, you want to move towards working with an electronic record e.g., you might submit a USB key in advance, allowing the Registry to do a proper screening / uploading of the electronic files.

There were references from members of the Bar to security issues with USB keys (apparently this topic was covered in one of the CBA conference panels on technology).

The Department of Justice representatives asked whether the Court prefers parties to file electronically.

CJ Crampton noted that if the document is e-filed but then printed without tabs, it can be difficult to find certain documents in a large volume.

Marvin Moses noted that hyperlinks can easily be included in documents.

Peter Edelmann added that litigants want to be sure that the format is not going to detract from counsel's position: you need to know how to bring the judge to the exact spot in the materials.

Justice Diner noted that today's point is primarily to get a general sense of the bar's interest.

Justice Elliott noted that it is not necessary to receive the full print version of the country condition documents. For tabbing, if it is in PDF, then it can be book-marked. For the certified tribunal record, excerpts are sufficient – an electronic compendium would be useful.

David Matas pointed out that under the Rules, litigants cannot serve originating documents electronically.

Deborah Drukarsh added that the Department is pursuing an electronic infrastructure initiative, but has little capacity at present (e.g., the Department does not allow wide-spread use of USB keys); she is open to speaking with the Court and IRB to explore options, such as a template for electronic documents. For now, the Department is mandated to keep paper files.

CJ Crampton encouraged the Department and other organization representatives to follow-up with Andrew Baumberg. We can identify issues and try to address some without additional funding; we should be able to make some progress.

Marvin Moses questioned whether USB is optimal, and suggested that it is better to file documents electronically using the Court's e-filing web portal to ensure that they are saved within the Court's record management system.

CJ Crampton noted, as well, that the Court business engine is vulnerable to crashing.

Justice Diner suggested a sub-Committee with a mandate to discuss these issues.

Action: creation of E-filing / E-Hearing sub-Committee. Deborah Drukarsh is the representative for the Department, Andrew Baumberg for the Office of the Chief justice; other interested groups are to submit the name of their representative.

There was a recommendation that the sub-Committee include someone with technical background to assist it in developing formal guidelines that meet the needs of the bar and the Court.

Justice Diner agreed.

One private bar practitioner added that he had some concern with mandating parties to shift to an electronic process with assumptions about what they are capable of doing.

CJ Crampton agreed that there is a change management issue. Initially, the Court is moving forward with pilot projects to allow volunteers to develop best practices that can be followed by other members of the bar.

3. Business Arising from Previous Meetings

(i) Scheduling

A draft Notice was circulated. CJ Crampton noted the Court's efforts to be more flexible.

Action: Justice Diner asked for comments by July 1.

(ii) Requirement to discuss settlement – draft paragraph in leave granted Order.

A draft text was circulated, which would require parties to explore options for settlement.

CJ Crampton noted that the Court is not able to backfill these cases that settle close to the hearing. He requested comments on the proposed paragraph.

Action: comments by July 1.

(iii) Consent Judgments.

A draft text was circulated. Justice Diner noted the initiative and asked for comments.

Action: comments by July 1.

(iv) Protocol: allegations against counsel.

A draft text was circulated. Justice Diner noted the request from Roaul Boulakia of the RLA to include a requirement that any reply (to the allegations) be in an affidavit, as this would allow for cross-examination.

Mario Bellissimo asked whether solicitor-client privilege might limit what can be included in an affidavit. There followed an exchange, amongst all committee members: the proposed requirement of an affidavit raises many complex issues, including the question whether there is an implicit waiver triggered by the allegation, as occurs in a law society discipline scenario. It was noted that not all former counsel respond to allegations under the current process; also, there were mixed views as to the quality of responses from former counsel. There was reference to such situations arising in a criminal process which might provide useful guidance. It was noted that under the proposed new process, the current time-frame is too short to provide an affidavit.

This item will not move forward in the near future, given the mixed views expressed today.

Action: comments are requested in writing, followed by further discussion at the next meeting.

Meeting Closed

Items Tabled to Subsequent Meeting (insufficient time)

- Visibility of clocks in hearing rooms
- JR of decision (VISA): 15 or 60 days?
- Publication of Decisions
- Committee Priorities in 2017-18
- Confidentiality issues
- Motions: stay of release from detention
- Access to counsel for people in detention
- Rules Committee Update
- Next meeting (Fall 2017)