

**FEDERAL COURT BENCH AND BAR
(IMMIGRATION & REFUGEE LAW)
LIAISON COMMITTEE**

MINUTES OF MEETING

Friday, February 2, 2007 (14:00 p.m - 3:45 p.m)
Teleconference

Present:

Chair: Madam Justice Judith Snider (Federal Court)
Mr. Justice Yves de Montigny (Federal Court)
Mr. Andrew Baumberg (Executive Officer to the Chief Justice, Federal Court)
Mr. Wayne Garnon-Williams (Registrar of the Federal Court)
Ms. Kerri Froc (CBA)
Mr. Lorne Waldman (Toronto)
Mr. Mitchell Goldberg (Montreal)
Mr. David Matas (Winnipeg)
Ms. Wendy Danson (Edmonton)
Ms. Jocelyne Murphy (Justice, Montreal)
Ms. Marie-Louise Wcislo (Justice, Toronto)

1. Opening Comments by Justice Snider:

* after welcoming all to the meeting, Justice Snider provided the following interesting national statistics from the FC:

2005: 7,800 leave applications (6,000 from the RPD); 1,459 leaves granted; 1,200 JR hearings

2006: 6,800 leave applications (4,600 from the RPD); 1,159 leaves granted; 936 JR hearings

* Justice Snider noted the sizeable drop in the number of RPD leave applications;

* Justice Snider noted the increase in stay applications; Ms. Wcislo indicated that in Toronto, stay applications had increased 78% between 2005 and 2006 (upon locating Toronto's stay statistics after the call, Ms. Wcislo now corrects the percentage given during the call: the Toronto increase was 68%);

2. Membership in and attendance at our Committee meetings:

* there will not be a judge from the FCA on our Committee;

* our next meeting in Victoria, B.C., shall be open to observers; Ms. Froc to ensure the meeting room is large enough to accommodate observers;

3. How to quickly convey "Leave Denied" FC Orders to lawyers:

* currently, the Orders are faxed to counsel (5-10 days after the judge's decision) and later sent by registered mail;

* Mr. Garnon-Williams explained the current steps in processing "Leave Denied" Orders:

A) the judge makes the decision

B) the decision is entered by CAS staff into the Court's electronic file system (called PMS; "Proceedings Management System")

C) the hard copy Order is ready 5–10 days later

D) the hard copy Order is faxed out to counsel and then arrives by registered mail to counsel about 2 weeks later

* Mr. Garnon-Williams proposed the following new method of notifying counsel of "Leave Denied" Orders: Since the Court's PMS is already publicly accessible on the FC's website, a Registry Officer would telephone counsel, advising them an Order had been made on file X, and that Order was available to be viewed on the FC website. The hard copy Order would NOT be faxed, but would arrive, as it does now, a few weeks later by registered mail.

* Ms. Danson has found using the FC's website to locate file docket information to be difficult and slow, while Mr. Baumberg and Mr. Waldman have found it easy and fast;

* Ms. Wcislo said that DOJ in Toronto could provide the CAS with one phone number, where they could leave all such "Leave Denied" phone messages, instead of having to call 65 different lawyers on their files;

* Justice Snider noted general support for this new method of notifying counsel of "Leave Denied" Orders, asking Mr. Garnon-Williams to reduce it to writing (including providing Committee members with the standard wording the Registry Officers would use when calling counsel), for the Committee to review at its next April meeting.

4. Benchbooks for the FC:

* Justice Snider noted the fine work of Mr. Provar of DOJ in Toronto on this topic; Mr. Waldman had distributed the proposed list of stay application cases to members of the private Bar, but has received little comment to date; he asked for 2 more weeks to solicit such comment; this was granted (he will provide any new proposed stay cases to DOJ for comment);

* once the list of stay cases is finalized, it will go on the FC website, hard copy Benchbooks will be created by the FC for its judges and its Courtrooms across Canada, and then a Practice Direction will issue, informing counsel of the Benchbook and the list of cases on the website, and that the cases on the list need not be provided in hard copy to the Court, a headnote would suffice;

* Justice Snider indicated many judges would download the Benchbook cases onto their laptops to have them in a portable format;

* in addition to the Stay Cases Benchbook, another book could contain the relevant SCC cases and perhaps 15 or 20 of the leading cases on immigration and refugee law generally;

* the Book(s) would be updated periodically by this Committee, as new caselaw emerges.

5. List of Certified Questions on FC website:

* FC now has a Legal Information Officer who is working on re-organizing and improving the usefulness of the list, grouping the cases where a question is certified, under sections of IRPA and perhaps by topics;

* questions certified under the former Immigration Act will be deleted;

* Mr. Matas suggested that similar/identical questions be grouped together.

6. Printing surnames of litigants in Bold Type:

* Mr. Baumberg had previously circulated a draft Notice to the Profession for comment; Mr. Matas stated more time was needed for comments on the draft, this was granted, with any comments to go to Mr. Baumberg, accordingly it will be put over to the agenda of the next meeting;

7. JR Scheduling Pilot Project in Montreal: Joint letter from both counsel setting out non-availability for JR hearings:

* Chief Justice Lutfy has approved a Pilot Project in Montreal, whereby in the time-frame for filing a Reply in a leave application, the option exists for both counsel to jointly send one letter to the Court, setting out times in the next few months, when each counsel is not available to argue the JR, should leave be granted;

* Ms. Edge of the CAS will endeavour to schedule any Montreal JRs taking into account counsels' stated non-available dates; if this Pilot proves useful in Montreal, it could be expanded to other regions;

8. FC's "summer break" scheduling of JRs:

* Justice Snider reminded the Committee that a Notice to the Profession is now posted on the FC's website, confirming the FC will not schedule any JRs nationally July 30 – August 10, 2007; stays and urgent matters will continue to be heard during these 2 weeks.

9. E-Filing of Immigration Documents in FC:

* since the fall of 2005, it has been possible to e-file in FC in IP matters; the initial response was slow but has been picking up recently; the experience of courts in the USA has been that e-filing only really works once it is made mandatory; not optional;

* Mr. Matas noted the IRB is reluctant to "electronize" its materials, (due to copyright concerns of documents such as various country condition reports); CAS discussions with the IRB have not progressed too far; DOJ Montreal had expressed concern over having to pay a fee for each filing;

* Justice Snider noted that in non-immigration litigation, she has asked the parties for electronic versions of all their pleadings and documents, and parties have willingly complied, which she finds most helpful;

* The Court intends to expand to allow for optional e-filing in immigration matters in the near future. While still in the long-range plans of the Court, there is no fast movement right now towards mandatory e-filing.

10. Permitting Counsel to argue teleconference stays from their offices, when the Judge is also on the phone:

* Justice Snider noted the lack of uniformity in practice among judges of the FC, when they are asked by counsel, if counsel may remain in their offices to argue a teleconference stay, when the judge is on the phone;

* the Court's concern is that stay application hearings be "accessible to the public"; she noted this concern could be addressed by the Registry Officer opening a Courtroom at the Courthouse, and having the judge and all counsel "present" on the phone;

* Justice Snider said most FC judges are receptive to letting counsel remain in their offices, so please do not hesitate to continue to ask for this; further, she will raise this issue at the next meeting of all FC judges.

11. Respondent's Motions seeking to withhold material from the CTRs in inland immigration JR cases:

* Mr. Waldman explained that in many of his cases, the JR process was unduly complicated and delayed when the Respondent (previously) unilaterally withheld materials from the CTR and (now, since Mohammed 2006 FC 1310) brings a motion after leave is granted, but before the JR, seeking to have the Court decide what material, if any, need not be disclosed in the CTR created for the JR; Mr. Waldman suggested this problem could be solved by having judges add a line in Orders granting leave setting a date by which the Respondent must file any such motion seeking non-disclosure;

* Ms. Wcislo responded that: a) such cases are very small in number; b) even if such a deadline for the Respondent to bring the motion was included in the Order granting leave, the complexity of such cases, involving as they often do other government departments such as CSIS, would make it unlikely the Respondent could readily comply with the short timeframe set out in the Order granting leave; c) rather than unnecessarily set out an unrealistic deadline in every Order granting leave, the nature of such uncommon cases makes them more suitable for case management, at the request of one or both parties; and d) such cases do not follow the general timeframes and procedure anyway, since, for example, the actual JR itself is held in two segments (the public and the *ex-parte*);

* Justice Snider said she was not in favour of amending the format of Orders granting leave, and case management appeared to be the most workable method of dealing with these types of cases, but that the topic would be carried over to the agenda of our April meeting.

12. Changes to the FC Rules, to provide for "class applications":

* Justice Snider confirmed there have been discussions at the FC Rules Committee of changes to the rules to provide for "class applications";

* proposed draft "class application" rules are close to being pre-published, likely before our next April meeting;

* she encouraged the Committee to watch for their pre-publication and take advantage of the opportunity to comment on the draft rules.

13. Next Committee Meeting:

* our next meeting will be held in conjunction with the CBA National Immigration and Citizenship Law Conference in Victoria, B.C., on April 13 and 14, 2007;

* Justices Snider, Phelan and de Montigny will all attend the Conference;

* Justice Snider thanked all members for their time and contributions.