

**Federal Court Bench and Bar
(Immigration and Refugee Law)
Liaison Committee**

Minutes of Meeting

**Friday, November 23, 2007 (2:00 p.m – 3:30 p.m.)
Teleconference**

Present:

Chair: Madam Justice Judith Snider (Federal Court)
Mr. Justice Yves de Montigny (Federal Court)
Mr. Andrew Baumberg (Executive Officer, Federal Court)
Mr. Anil Kamal, Senior Registry Officer, Federal Court Registry
Ms. Wendy Danson (CBA, Edmonton)
Mr. Gordon Maynard (CBA, Vancouver)
Mr. David Matas (CBA, Winnipeg)
Mr. Lorne Waldman (CBA, Toronto)
Ms. Kerri Froc (CBA Liaison Counsel)
Ms. Lori Hendriks (Senior Counsel, Immigration Law Section, Toronto Regional Office)
Mr. Scott Nesbitt (Counsel, Citizenship Immigration and Public Safety Law Portfolio Ottawa Office)
Ms. Christine Bernard (Counsel, Montreal Office)

1. Opening Remarks, Agenda & Minutes

(i) Responsibility for Minutes

Mr. Baumberg will prepare the minutes.

(ii) Review of Minutes for April 14, 2007

Approved.

Justice Snider presented some statistics, noting a decrease in applications for judicial review for refugee protection division decisions, while applications in other areas remain at levels similar to previous years. As a result, and as a result of the assignment of additional judicial resources, the backlog of cases in Toronto has been reduced. All other cities are up to date. Ms. Hendriks was of the view that, regarding stay applications, the number of applications was similar to 2006. She noted that her client's targets were down, and so there might be a drop in applications in the future.

2. Business Arising from Previous Meetings

(i) Faxing leave denials to counsel

Some background was provided regarding this request raised by Mr. Matas and the proposal by the Registrar Mr. Garnons-Williams. With the departure of Mr. Garnons-Williams, the project has not advanced. There was a proposal to drop this. However, upon further discussion, it will be tabled until Mr. Matas is able to comment.

(ii) Common List of Authorities

Mr. Baumberg prepared a draft notice and is finalizing the material within the Court so as to implement this project. It will be posted and paper copies will be made available in each Court

room and judicial Chamber. Mr. Waldman has received some additional suggestions for the list which he will review with Justice and then send on to the Court.

(iii) List of Certified Questions

A reorganization of the list was circulated to members of the Bar, who expressed appreciation for the new format.

(iv) Surnames of Applicants

The Notice has been signed and is posted on the Court web site.

(v) Consultation with counsel in advance of setting hearing dates

Justice Snider noted that this is a pilot project for Montreal. The Office of the Judicial Administrator continues to monitor cases for conflicts, and the Court is open to special circumstances. Mr. Waldman asked if counsel might advise the Court of vacation dates. Ms. Edge noted that she considers this already. Justice Snider cautioned counsel, though, that only reasonable requests could be considered – counsel cannot advise that he / she is away all Summer, for example.

(vi) Second motions day – Toronto

This was raised at the Victoria meeting with the Bar and was then discussed at length within the Court. An alternate proposal has been implemented on a pilot basis, namely to have an extra duty judge in Toronto to hear urgent applications for stay of deportation. This measure is not meant to replace the motions day on Monday, but rather to provide flexibility for urgent applications that would normally come on short notice and be heard by teleconference from Ottawa due to the absence of judicial resources in Toronto.

Ms. Danson asked whether this initiative has been communicated to other members of the Bar. Ms. Hendriks noted that she had worked with Mr. Bellissimo, member of the Ontario Bar Association. The initiative can be communicated to the full immigration bar, as long as it is clearly presented that it is not a second motions day (as described above). Members of the Bar appreciate this initiative, which allows much more flexibility for the Court and members of the Bar to proceed expeditiously with urgent hearings.

Ms. Hendriks noted only one issue concerning security: when counsel are asked to attend in person for after-hours hearings which would otherwise be heard by teleconference, often from counsel's office. There is concern that DOJ is often not aware of all of the issues involved until the last minute. Justice Snider acknowledged that the concern with security extends beyond the Court environment and agreed that this is a serious issue that cannot be addressed through additional security measures on-site. This issue will be raised with the full Court to encourage a more flexible approach.

(vii) Summer sittings

The weeks of July 28 and August 4 will be non-sitting weeks, with the exception of Vancouver.

(viii) Public Access to Orders

Raised by Ms. Froc at the last meeting – when the Court issues an order without formal reasons, it is neither translated nor published. This issue has not advanced significantly, though it was noted that one factor was the cost of translation. Ms. Froc noted that, in some cases, lawyers are

disciplined if they cite these speaking orders. Ms. Hendriks noted that, in the Department of Justice, where the case was useful there may be a reporting email to the lawyers with a link in the email to the order in the electronic file for the case. There is no easy way to search for these unreported orders.

For the time being, the Court has no plans to implement this proposal, though is open to receiving formal submissions from the Bar setting out grounds in support. There was some discussion as to whether it was for the Court to decide whether an order was of precedential value or not. Mr. Baumberg noted that, as Media Officer, he occasionally received a recommendation, from a member of the Bar, that an order be posted because it is regularly cited. Such orders can be brought to the attention of Mr. Baumberg. A longer-term initiative involves improvements to the Court's case management system which could allow access to Court orders in the same manner as the Court docket is currently available.

(ix) E-Filing of Immigration Documents

Mr. Baumberg provided an overview of the project and two key issues relevant to the immigration bar – electronic service of documents and electronic certification of the tribunal record. For both of these, potential solutions are being developed for an upcoming amendment to the Notice.

Ms. Hendriks noted that, for the Department of Justice, the key issues are cost (it is cheaper to fax) and technology (conversion to PDF). A business case must be made to their client. Also, upload time on a test-server was considered excessive. If cost issues can be addressed, they will proceed. For the private Bar, Mr. Matas is concerned about requiring e-service via LNC. Mr. Baumberg noted that the Court was looking to provide an open model rather than forcing use of a single service provider. Finally, Justice Snider invited proposals from the Bar to address practice issues related to electronic filing / service.

CBA / Department of Justice Items

(x) E-Filing: Fax service of Leave Application

Ms. Hendriks noted a proposal from Mr. Bellissimo to serve documents by fax. This is on-going project. Ms. Froc suggested use of an 'acknowledgement of service' form – from the rules in Saskatchewan.

(xi) Elimination of "care of" addresses on Leave Application

This was raised by Ms. Froc at the CBA, due to concern that it facilitates practice by ghost consultants.

Ms. Hendriks noted Supreme Court jurisprudence that indicated that individuals can use different addresses, and have support from non-lawyers, as long as there is no evidence that non-lawyers are actually acting on behalf of an individual. The approach at the Department of Justice is to raise this only in cases where there is a pattern of behaviour suggesting someone is acting as legal counsel, and then to bring this to the attention of the Law Society. Justice Snider asked whether this was a serious matter at this stage. The issue is to be monitored and kept on the agenda until the next meeting.

(xii) Teleconference Participation from Office

Discussed earlier in meeting.

(xiii) Security

This concerns some deficiencies seen in the security practice in Toronto:

- Defective technology (e.g., wand not functioning properly)
- Lax attention to security practices
- No security measures on some floors

3. Federal Courts Rules

(xiv) Rules Committee – Class proceedings

Going to Canada Gazette Part II shortly.

4. Varia & Next Meeting

It was noted that, in some cases, counsel do not put both Ministers on application – Minister of Citizenship & Immigration as well as Minister of Public Safety and Emergency Preparedness.

Secondly, it was noted that counsel should use both languages for citation of Rules / Statutes.

Thirdly, Mr. Matas raised an issue regarding service by courier: could the Registry show the date when service was initiated? Justice Snider asked Mr. Matas to provide a short summary note that can be provided to the Registry for action / response.

The next meeting is to be held in conjunction with the CBA conference at Niagara-on-the-Lake, May 16 – 17, 2008. Ms. Froc will coordinate with Mr. Baumberg to confirm at date.