

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

MINUTES OF MEETING

Friday, November 25, 2005 (13:30 p.m - 3:00 p.m)
Ottawa, Ontario (with teleconference access)

PARTICIPANTS

Federal Court

Justice Judith Snider
Justice Michael Phelan
Andrew Baumberg, Office of the Chief Justice
Claude Provencher, Registrar
Donna Yau, Senior Registry Officer

Canadian Bar Association

Wendy Danson, Edmonton
Gordon Maynard, Vancouver
David Matas, Winnipeg (by phone)
Lorne Waldman, Toronto
Isabelle Dongier, Montreal

Department of Justice

Brenda Carbonell, Justice, Vancouver (by phone)
Jocelyne Murphy, Justice, Montreal (by phone)
Leigh Taylor, Justice, Ottawa (by phone)
Marie-Louise Wcislo, Justice, Toronto (by phone)

Recording Secretary: Andrew Baumberg

1. Opening Remarks and Preliminary Discussion re Committee Structure

Justice Snider has been appointed Chair on behalf of the Federal Court and advised that this Committee has been enthusiastically embraced at the Court.

With respect to organization, **Mr. Matas** noted the CBA had no additional budget for a sub-committee separate from the existing national bench and bar liaison committee. He suggested two meetings each year, one short meeting by phone and then a longer one to coincide with the annual CBA conference. Meetings should be sufficiently separate in time from the national bench and bar meetings. The CBA will develop a formal proposal with respect to the committee's organization.

Mr. Waldman suggested additional *ad hoc* meetings, if necessary, for discussion of specific issues.

Justice Snider noted, in response to a question regarding the appropriate size of the committee, that it should be a function of the "results-driven" nature of the committee. The Court is open to proposals.

Finally, with regard to subsequent conferences of the CBA, the following dates were provided:

- May 5-6, 2006 : Quebec City, Qc
- May 13-14, 2007 : Victoria, B.C.
- May 16-17, 2008 : Niagara-on-the-Lake, On

2. CBA / Department of Justice Items

(i) Faxing leave denials to counsel;

Mr. Matas asked whether it might be possible for the Registry to fax to counsel Orders denying leave, because often they have a perfected leave application outstanding at the time a stay needs to be brought, they go ahead and bring the stay, only to find out from the Court that leave has already been dismissed; it would be better to know this earlier.

Concerns were expressed by **Ms. Yau** about the extra time and effort this would require from Registry staff. It was noted by **Mr. Baumberg** that amendments to Rule 395 were being developed by the Registry which might streamline the existing process.

This item will be brought back at our next meeting in May 2006.

(ii) Arguing "serious issue" on stay after leave is granted;

Mr. Waldman suggested that counsel include a note in a cover letter on a stay application so that the Registry could check with the Ottawa office regarding the status of a leave application. It was noted that this might be necessary in some 40-50 cases per year where a stay application was made after the judicial review application had already been perfected.

Ms. Yau noted that the Registry can track the location of a leave application but not its status. If it were tracked to a judge's chambers, it would be simple to call to confirm the status of the file.

(iii) "Bench Book" of jurisprudence for some common types of immigration practice in the Federal Court, such as stay applications.

Ms. Weislo suggested the possibility & utility of creating a "Bench Book" of commonly cited immigration jurisprudence to alleviate the need for counsel to constantly reproduce and submit many of the same cases in every stay or judicial review application, pointing out that other Courts already have successfully put in place such a practice. The idea was warmly received by all. **Mr. Waldman** offered to begin the process by providing to the Department of Justice an initial list of "core cases" in stay / judicial review applications for comment.

(iv) consolidation of cases with same subject matter

Mr. Matas noted problems arising from cases with similar issues advancing in parallel.

Justice Snider indicated that although the Court cannot perform a triage, it is quite open to consolidate appropriate cases that are brought to the Court's attention.

Ms. Dongier suggested that, with the eventual implementation of e-filing, it might be possible to implement some form of key-word classification of the issues to facilitate consolidation.

The members of the Bar encouraged the Court, if it were aware of similar issues in parallel cases, to raise with litigants the possibility of joining cases.

Ms. Weislo noted that the Department of Justice, as an institutional respondent in all cases, was working to address this issue.

- (v) *Updating list of Certified Questions in Immigration cases;*
- (vi) *Posting Certified Questions not necessarily found in reasons for decision;*

Mr. Matas noted that the current list made available by the Court was updated approximately every 3 months, but was not complete. His concern was that, if the question was not included in the reasons, it was very difficult to track. Perhaps a separate neutral citation might be assigned?

Mr. Baumberg indicated the Court would attempt a more frequent update to the list, possibly on a one or two week time-frame, and noted as well that the new docket search tool available on the Court's internet site allowed litigants to view the recorded entries for each case, which included an entry regarding certification of a question. It was acknowledged that a system was needed to catch all certified questions, whether or not they were included in the reasons for decision.

(vii) accommodating cultural differences in surnames

Members of both Bench and Bar acknowledged the difficulties with the current system of identifying parties, whereby in some instances it was not possible to distinguish between the individuals' surnames and given names. A number of options were discussed to highlight the person's surname, and it was finally agreed that the surname should be set in **bold font** (an earlier proposal to underline the surname was abandoned due to the confusion that might result from amendments, which also must be underlined).

The bar made a further request to the Court that, if possible, the full names of parties be included in the decisions database as part of the style of cause. This would facilitate searches by name.

3. Federal Courts Rules

(i) Federal Court Immigration and Refugee Protection Rules

The new rules are in force (as of November 15, 2005). With respect to rule 5(2), it was noted that Bill C-26 was still waiting for an order-in-council.

(ii) Rules Committee – Class proceedings

Mr. Maynard noted that a rules sub-committee was working on possible amendments to the rules which would allow for representative proceedings and class proceedings. This would therefore make provision for "class applications". However, the related issues are complex and nothing will change quickly, as the Rules Committee continues to examine this issue.

4. Varia

(i) Leave Process Update

The participants discussed whether there may be some efficient and practical way for the Registry to advise both parties to a leave application that leave would be granted in the future, before the actual Order granting leave (and setting the hearing date) is issued.

Justice Snider noted the Court was up to date except in Toronto, for which there was still a delay of some 4 to 5 months between perfection of the application and final decision on the issue of leave. She added that the situation in Toronto was improving, but recognized that there was some benefit for parties to receive advance notice, and indicated that this issue would be discussed further within the Court.

Mr. Waldman stated that advance notice regarding the leave decision would be of assistance to the Immigration and Refugee Board in its preparation of the record. **Mr. Maynard** added that it would also

be relevant to the Border Services Agency, which might then defer deportation. As a consequence, there would be no need for an application for stay of deportation.

Justice Snider invited a joint submission to the Court setting out the benefits of such advance notice along with recommendations of the CBA and Department of Justice.

Mr. Matas noted that the practical issues are evident, but the problem was a legal / statutory one. The CBA and Department of Justice would discuss and comment on the legal issue.

Mr. Waldman, Ms. Danson, and Ms. Taylor were invited to draft a letter jointly.

(ii) E-filing

Justice Snider noted simply that an e-filing pilot project had been launched initially within the intellectual property jurisdiction of the Court. To be discussed at a subsequent meeting.

(iii) Legal Aid

Justice Snider noted that the Court intended to include some information on this topic at an upcoming Court seminar on immigration and refugee law issues.

(iv) Removal process

Justice Snider mentioned that the Court had become aware that the Canadian Border Services Agency intended to hire a significant number of staff in the Toronto area to make removal arrangements for deportations; it would be of assistance to the Court, in managing and planning its workload, to be provided with such information as it becomes available.

Mr. Maynard added that, although the number of removals had increased, few would likely go to the Court given the cut-backs in legal aid. **Ms. Danson** noted that some \$700M had been announced for immigration processing.

5. Closing Remarks

The next meeting will be held in conjunction with the CBA conference in Quebec City on May 5 and 6, 2006. It was proposed that May 6th might be a better date to accommodate the meeting.

A final issue was raised by the Bar with respect to scheduling of hearings. The Court was asked to contact both parties before setting a hearing date, particularly in the Summer. **Mr. Waldman** asked that this be placed on the agenda for the next meeting.

Mr. Maynard concluded by noting that the meeting had been very productive and more than met the Bar's expectations.