

**IP Users Committee**

MINUTES
MAY 11, 2017
OTTAWA, ON

Attendance: Justice Manson (Chair), Chief Justice Crampton, Justice Barnes, Prothonotary Lafrenière, Prothonotary Tabib, Prothonotary Milczynski (by phone), Prothonotary Aalto, Prothonotary Aylen, Yuri Chumak, Carol Hitchman, Trent Horne, Patrick S. Smith, Brad White, Lise Lafrenière Henrie

Regrets: Justice Phelan, Justice O'Reilly, Justice Locke, Jonathan Stainsby, Julie Desrosiers

SUBJECT	STATUS / ACTION
<p>1. Agenda – approved</p> <p>2. Minutes of November 3rd, 2016 meeting - approved</p> <p>3. Issues arising from the Town Hall Participants provided excellent feedback on a variety of topics at the Town Hall. Discussion on the Trial Management Guidelines, in particular on the 50-page limit for written arguments. The idea is to make the trial as efficient as possible. This will become even more important when the PMNOC Regulations provide that matters have to be completed within 24 months. Counsel need to think about final submissions when setting a trial date. Discussion was made of the chess clock used in competition cases; it keeps parties on time. Justice Manson indicates that this, in effect, already happens in many cases where there is an agreement on how much time will be provided to openings, witnesses, cross-examinations and closing arguments. The time agreed to becomes the “clock”. The bar indicates that the Court must hold parties to this agreement, to ensure a level playing field.</p> <p>Patrick raised an issue related to discovery. There is an assumption that an affidavit of documents is frank and complete. There is a limit on the ability to ask questions about the affidavit (a motion must be brought). If there is a deficiency, you need to prove it; otherwise the other party won't produce the missing documents. Counsel may ask an excessive number of questions to try to uncover information. In some cases, this is abusive and may lead to a cost award. Counsel should be focusing on the issue. While the client may have a certain mindset, the lawyer knows the relevant grounds of invalidity and infringement and needs to stop “fishing”. Carol raised the concern that cutting back on discovery, which can help reduce the issues, could shift the onus in the trial. In the U.S., AB and NS, they</p>	

examine experts. Expert examination is an area for further consideration.

The discussion on claims charts again focused on how counsel prepare cases. Patrick indicated that some don't want to provide claims charts because they think their position might change. There was agreement that the right way to do it is to plan ahead and focus on a particular strategy. Amendments to claim charts based on expert opinion is open to the parties.

Carol also raised the concern about "document dump" where the affidavit of document is a long list of documents in no particular order (not chronological, nor by patent). This should be addressed in case management.

The Court asked the bar to provide their view as to how the affidavit of documents should be organized – by patent, chronological, other?

Patrick indicated that other courts have a practice direction on document discovery. He will provide further information on this. The Court reminded lawyers that they should consider who is opposing counsel and to ask the case management judge if they need a direction. Not everything needs to be in a practice direction.

The Town Hall also provided the suggestion to create a working group to implement the new NOC regulations. The Bar was asked to provide a list of members from firms representing innovators and generics (five each).

There was a discussion that trial dates be limited to 10 days. For all but exceptional cases, that should work but for the transition, it was suggested that the target be 10-15 days.

4. Search Function for IP Cases

Lise explained a recent change made to the [Federal Court site's](#) search syntax for IP cases.

Revision to Search Syntax (in the "Party Information" search field): The search syntax was altered in April 2017 to allow users to search for a character string anywhere in a database field. A search term of "ABC" will now return results for any of the following examples: "ABCXXXX," "XXABCXX" or "XXXXABC." (Before the syntax was altered, only the first result would be shown.)

Bar members agreed that this more inclusive approach provided better information.

5. Security Screening

The Chief Justice explained that the [new screening process](#) implemented for the four federal Courts. The bar had some concerns about possible delays but it was noted that there are rarely any lineups. As well, counsel can ask for priority screening if they are due in court.

6. List of Cases

Justice Manson distributed the most recent update of IP Cases (to February 28, 2017).

7. Workload and Scheduling

The CJ reported that the Court is scheduling hearings of 1 day or less within the next 2-3 months; hearings of 2-5 days within 5 months (mid-

Bar to provide comments on how to organize affidavit of documents

Patrick to provide information on other courts' practice directions on document discovery

Bar to provide list of members from firms representing innovators and generics (five each) for new working group

October) and for 6+ day, in 18 months (early 2018). There aren't many takers for the ready list. It may be more appropriate for non-pharma IP cases to take advantage of this list.

8. Records Retention

IPIC had provided a submission in December 2016 (following the last meeting) that suggested that IP files be maintained, that the Court consider focusing on certain IMM cases and to focus on digitizing files. The Chief Justice asked the bar if it would be possible to eliminate files prior to a certain date – for example 20 years. The bar mentioned the possible benefit of old experts' reports but agreed that files older than 20 years could be destroyed.

9. Other Matters

- *Notice to the Parties and the Profession - Case Management: Increased Proportionality in Complex Litigation before the Federal Court* (June 24, 2015) – This seems to be working well based on feedback at the round tables this morning.
- Science and Technology Primers - Justice Barnes is seeing anomalies in “testing protocols”. It appears that there is little agreement on how to test. Primers are for both judges and prothonotaries. The Bar should consult members on how to have more consistency in primers. It may be difficult to get experts to agree on a testing protocol (depending on what it is). There may be cases where it is appropriate to get experts together and have them look at the claims and identify the differences. The Guidelines could be amended to provide that they parties stipulate where experts agree.
- Claims Charts – to be circulated to members again (previously circulated prior to November 2016 meeting).
- Discussion of a section 8 hearing where non-parties obtained transcripts and then a confidentiality order applied retroactively.

10. Next meeting will be on November 2nd, 2017 in Toronto.

Bar to confirm that IP files older than 20 years can be destroyed

Bar to provide suggestions as to how to have more consistency in primers

Case management committee to consider amendment to guidelines

Lise to circulate Claims Chart format

Letter to be shared with the Court