



## IP Users Committee

## MINUTES

NOVEMBER 21, 2017

OTTAWA, ON

**Attendance:**

*for the Court:* Justice Manson (Chair), Chief Justice Crampton, Justice O'Reilly, Justice Barnes (by phone), Justice Locke (by phone), Prothonotary Tabib (by phone), Prothonotary Milczynski, Prothonotary Aalto, Prothonotary Aylen (Justice Rennie from the FCA joined for the last item on the agenda.)

*for CBA:* Yuri Chumak, Scott Beeser (for Jonathan Stainsby), Trent Horne

*for IPIC:* Christopher Tan (for Carol Hitchman), Patrick S. Smith (by phone), Julie Desrosiers

**Secretary:** Lise Lafrenière Henrie

**Regrets:** Justice Phelan, Justice Lafrenière

SUBJECT	STATUS / ACTION
<p><b>1. Agenda – approved</b></p> <p><b>2. Minutes of May 11<sup>th</sup>, 2017 meeting - approved</b></p> <p><b>3. Amendments to the NOC Regulations – new working group</b></p> <p>In discussing membership, it was agreed that the CBA and IPIC would each put forward the name of two members (one for innovators and one for generics). The new working group will identify topics for discussion, and additional topics may be identified by the IP Users Committee. Possible topics/best practices: case management; retaining experts early; early claim construction. The Chief Justice asked members to put together, by mid-January 2018, a running list of issues that arise with the new process, where a call will have to be made by the Court. Prothonotary Aylen mentioned that she's working on a timetable order. She will circulate it by the end of the month to the Bar, for comments by mid-December (<i>note the deadline was changed to end of January 2018</i>).</p> <p><b>4. Confidentiality Orders</b></p> <p>Prior to the meeting, Justice Manson circulated a draft report on confidentiality for comments. Page 4 lists what should be included in a confidentiality order. Should these elements all be included? Trent raised an issue about the enforcement of protective orders. It is preferable to have an order over an agreement because it's not clear who would have jurisdiction over the enforcement of an agreement. Prothonotary Tabib mentioned that she addressed enforcement in <a href="#">Live Face on Web</a>. There</p>	<p><b>CBA and IPIC to provide 2 names each to Lise for new working group</b></p> <p><b>Bar to provide to Lise any issues arising under the new process by mid-January 2018</b></p> <p><b>Bar to comment on draft timetable order (sent December 1, 2017) by end of January, 2018)</b></p>

<p>were questions about how foreign parties and non-parties could be bound. Justice Manson requested feedback from IPIC and CBA by mid-January. For section 8 cases, Chris asked whether there could be a presumption that third party information is confidential rather than having to bring a motion under R. 151. Prothonotary Milczynski mentioned that there are two issues: 1) what information the client wants protected; 2) how that information is kept in court. Chris agreed that the information would be shared only with outside counsel. In s. 8 cases, where 3<sup>rd</sup> parties have to provide information, the Court should give a protective order. Where 3<sup>rd</sup> parties are not compellable, different rules apply. If compelled, costs can be addressed. The Chief Justice suggests that counsel may want to consult competition law colleagues as well to determine what information should be protected.</p> <p><b>5. E-trial pilot</b></p> <p>The Chief Justice explained that there have been a couple of successful e-trials in aboriginal law. E-trials are party-led; the Court is relying on parties to make the request. It was suggested that case management may help identify matters that could go to e-trial.</p> <p><b>6. Workload and Scheduling</b></p> <p>The CJ reported that several files were open just before the new PMNOC regulations took effect. The Court has 32 NOCs to deal with under the “old” system: 14 have to be heard by July; 18 came in in October/November, to be heard by August.</p> <p>There hasn’t been much use made of the ready list, but patent cases may not be the type of cases to benefit (as they cannot usually be moved quickly). Copyright or trademark cases may benefit however – this could be raised at case management.</p> <p><b>7. Records Retention</b></p> <p>The bar provided input on file retention from various perspectives: aboriginal, IP, Maritime Law, Immigration, etc. The Court is looking at retaining files for 15 years and providing a notice before discarding them. More information should be available soon.</p> <p><b>8. Court security screening</b></p> <p>This issue had been raised by Chris Tan. The Director General of Security Services for CAS called him to explain how the federal courts are different from provincial courts. Security has to be tighter at the entry point. He also indicated that he would be ensuring that security officers assist with getting heavier items through the security scanner.</p> <p><b>9. Rules Committee</b></p>	<p><b>Bar to provide comments on the draft report by mid-January 2018.</b></p> <p><b>Bar to consider requesting e-trials; Court to raise this in case management.</b></p>
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Justice Rennie, Chair of the Federal Courts Rules Committee, joined the meeting to provide an update. The Committee has been delayed in moving on amendments because it doesn't have quorum. Three positions for representation from the bar have remained vacant since November 30, 2016.

Justice Rennie highlighted two amendments that the Committee would like to pursue: 1) proportionality: not just a statement of principle, but an obligation for counsel to conduct their cases accordingly; 2) vexatious litigants: an amendment would give the courts broader powers to direct that documents be filed or not filed without leave of the court. The proportionality amendment will help in IP cases.

Rule 152 is also being amended to require that a party file a public, redacted version of any document filed on a confidential basis pursuant to an Order of the Court (under Rule 151), along with a statement from the party's legal counsel (or affidavit of the party) affirming that they have reviewed the order and that the only information that has been redacted from the public version of the document is that which is required to be treated as confidential by the order. Some further consequential changes are also made to other parts of Rule 152 to make the language and structure consistent with the proposed amendment. This amendment was published in [Canada Gazette, Pt 1](#) on November 5, 2016. As the Rules Committee hasn't met in the past year, no progress has been made on this.

With respect to costs, the Committee has made several recommendations, including a 30% increase, reducing the number of columns from 5 to 3. It's recognized that costs aren't much of a deterrent in pharma cases, but it can be in other IP matters.

**10. Next meeting will be on May 31<sup>st</sup>, 2018 in Ottawa.**

**Bar to provide comments on proposed amendments (published on November 5, 2016), and any other amendment.**