

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

MINUTES April 18, 2009, Whistler BC

Present:

Federal Court:

Chief Justice Allan Lutfy

Justice Judith Snider

DOJ

Marissa B. Bielski

Sandra Weafer

Michel Synnott

Diane Dagenais

CBA

Mario D. Bellissimo

Kerri Froc

Marvin Moses (observer)

David Matas

Wendy Danson

Mitchell Goldberg

Gordon Maynard

AWM Seurayr (observer)

1. Agenda & Minutes

- i) Responsibility for Minutes:
 - Wendy Danson agreed to take the minutes
- ii) Review of Minutes from Meeting of May 17, 2008:
 - Minutes adopted as circulated
- iii) Update from the Federal Court: Justice Snider:

Justice Snider gave a current overview of applications at the Court

 - leave applications are being dealt with expeditiously
 - 5700 files opened last year
 - at the end of March, 2009, 1596 files were opened; this is up 100 from last year but is not unexpected with the increasing number of IRB decisions due to new appointments to that Board

2. Business Arising from Previous Meetings

- i) Common List of Authorities
 - Case names for proposed additions to the list should be passed onto Andrew Baumberg for review with Justice Snider
 - *Khosa* should definitely be considered

- ii) List of Certified Questions
 - List was revised in August and November, 2008 and February, 2009: no certified questions received since then
- iii) Name Plates for Judges
 - Toronto office has nameplates for all judges and prothonotaries: some offices require holders for the nameplates; this continues as a work-in-progress
- iv) Telephone for counsel in Toronto
 - Consulting rooms on each floor contain an active telephone for counsel's use; if necessary, counsel can get their cell phone from the commissioner and return it once its use is completed
 - Court is considering proposal to Media Access policy which would allow counsel/journalists to bring BBs/cell phones into hearing room **as long as they are turned off**
- v) Dissatisfaction with Lecterns -Toronto
 - Justice Snider passed around photographs of the newly designed lecterns for counsel which have now been installed; these were greeted with enthusiasm; this problem appears to be resolved

3. CBA / Department of Justice Items

- i) Pilot Project for E-Serving
 - Diane Dagenais reported that the results of the e-filing pre-pilot project in Toronto have been circulated within the Department of Justice and the Department is currently developing a national position on e-filing and e-service.
 - David Matas indicated this option is currently available, and is authorized by R.147, and he finds it "okay"
 - Mario Bellissimo to ensure availability of this is provided to the CBA listserv
- ii) Restriction on Identification of Vulnerable Persons in Federal Court Cases
 - Justice Snider commented on the principle of the Court being an open court system and that a motion to vary this is available should it be deemed warranted
 - The problem of these cases still being available through various other search engines was raised, although the cases themselves are not available through a Google search: as the publisher of the Federal Court Reports is the Commissioner, this issue should be further raised by the CBA with the Commissioner and the Board dealing with publication of the FCRs

- iii) Development of Screening Mechanisms for non-lawyers filing Leave Applications:
 - Mario Bellissimo raised the concern of non-lawyers filing leave applications on behalf of individuals and using the non-lawyer's address for Court correspondence/service of documents, effectively practicing law. This confuses and misleads applicants/appellants
 - Mario will take this matter back to the Regional DOJ/CBA level for further discussion

- iv) Stay Judges being seized on underlying Leave Applications
 - Chief Justice: the title is incorrect, as no one is seized of anything: where a stay has been granted and the file is perfected for determination of leave, it does go back to the same Judge; where the stay motion is dismissed, it goes back into the inventory for assignment to another judge
 - the purpose of this is to enhance the appearance of consistency; the Judge still reviews the new materials on the leave application and makes a new decision
 - There was concern expressed by both the CBA and DOJ that judges may want to argue the leave application at the same time as the stay application: facts on this should be provided to the Court (through Andrew Baumberg)
 - Diane Dagenais suggested it is not necessary to have the same Judge as the tests on a leave application vs. a stay application are different
 - Justice Snider indicated there is a small committee of the Court looking at "Best Practices" in Immigration matters: this is something that may be addressed here, and an update of this will be provided at the next meeting
 - Chief Justice: the Court will look at this issue at its meeting in May

- v) Summer Recess
 - This is posted on the Court Website: August 3rd to August 14th, 2009

- vi) Joint Development of Case Books
 - Dealt with above

- vii) Informing Applicant's Counsel of Motions for Interim Stay Orders
 - Mitchell Goldberg explained that this issue has arisen in the situation where a person, represented by counsel, is released from detention and DOJ makes a stay application to the Court, ex parte
 - CBA raised this matter with DOJ at a meeting in Ottawa in the fall, 2008 and CBA is awaiting a response.
 - Michel Synnott, DOJ, indicated that a letter is in process and is being reviewed by the Minister's Office
 - Mr. Synnott explained that there are 3 situations where this might arise: one, if there is enough time, DOJ tries to serve; two, where the application must proceed quickly, for example outside of regular hours, and where a courtesy copy can be sent to the lawyer/consultant, DOJ

will do so; and three, where there is not enough time and DOJ must act quickly.

- This matter has been raised at the Barreau de Quebec as well
- The issue is particularly acute in the Montreal area, and only occasionally in the rest of the country
- Justice Snider indicated that the Court has procedures for ex parte applications, for example, regarding Anton Pillar orders. She asked each of Mr. Synnott and Mr. Goldberg to provide a written for the Court's information containing a statement from their perspectives of the problem

- viii) Registry providing entire file to the Court instead of just pleadings
- This is a matter that arose at the Federal Court of Appeal on an appeal from stay proceedings at the Federal Court. It is not an issue for this committee
- ix) Rules 141(2) and how Rules can accommodate the case of inter-city couriers where date of receipt and date of service are different
- David Matas raised this issue as still being of concern and arises where documents are sent for service by courier on one day but not necessarily delivered until the following or another day. He sees this as he is dealing with DOJ offices across the country. At the moment the certificate of service indicates the date of service as being the date the document is provided to the courier. This has implications for time periods for example on the preparation and filing of records
 - Justice Snider suggests requesting an extension of time, but this requires a motion
 - Mr. Matas suggests it should read the day after certificate of service
 - Justice Snider has asked Mr. Matas to prepare a letter to the Court, to her attention, setting out this problem, with an example, and suggesting a potential solution
- x) Motions Day
- A Toronto issue: where counsel must sit through long, technical applications while awaiting to present a stay application.
 - Justice Snider wondered whether the solution of scheduling the stay motions first would resolve the problem
 - Mario Bellissimo indicated that most judges do vet the list and if necessary set times for counsel later on the list to re-appear.
 - Sandra Weaver indicated some judges ask how long counsel anticipates the stay motion to be
- xi) Short Time-Frame in Orders granting leave
- Diane Dagenais raised this issue, the problem being the short time-frame between the granting of leave, particularly if the record has still not been received, and the hearing of the application, sometimes as short as 2 months. This creates a problem particularly where a further memorandum or supplementary affidavit is required and this must

come from overseas. A better solution would be to allow for a full 3 months prior to the scheduling which would give sufficient time for additional documents and cross-examinations if necessary

- Chief Justice noted that early dates are being set as the Court is more up-to-date. He indicated that although IRPA indicates dates are to be set within 30 to 90, this issue will be considered by the Court

4. Federal Courts Rules

- Tabled

5. Varia & Next Meeting

- Justice Snider provided some concluding comments indicating the Court will make an effort to set up a 6 month telephone conference meeting
- Chief Justice made some concluding comments that the Court is undertaking a review of its practices over the past 20 years. He also mused on the impact of the recent decisions from the SCC, (*Dunsmuir and Khosa*), on stay applications
- Kerri Froc expressed her appreciation on behalf of the CBA to the Court and the DOJ for attendance at and participation in this meeting