



**Federal Court of Appeal & Federal Court
Labour Law, Human Rights, Pension Benefits, Privacy and
Access Review Liaison Committee**



**Friday, June 8, 2018
Ottawa, Ontario**

MINUTES

Attendance: Justice Mary Gleason, Justice Mactavish, Barbara McIsaac Q.C., Maryse Tremblay, Karen Jensen, Sandy Graham, Peter Engelmann, Amélie Lavictoire, Andrew Baumberg, Steven Welchner, Louisa Garib, Andrew Raven, Athanasios Hadjis, Julia Barss. **Phone:** Stephen Moreau; **Regrets:** Justice St-Louis, Prothonotary Milczynski, Jack Graham Q.C., Catherine Lawrence.

1. Introductory Remarks

Meeting participants introduced themselves and were welcomed by Justice Gleason.

2. Agenda & Minutes (November 3)

Approved.

3. Follow-up Items from last meeting

a. Mediation for labour, human rights, pension benefits, privacy and access review cases

Justice Mactavish provided background and confirmed that the Court has hired someone to work on development of a new web site which will include a dispute resolution page. The alternative dispute resolution (ADR) process can start with a simple letter to the Court or within case management.

As noted at the previous meeting, Justice Gleason reiterated that the Federal Court of Appeal does not have sufficient resources to have a comprehensive triage and ADR process.

b. Common List of Authorities

Peter Engelmann provided a brief report on initial discussions with Karen Jensen. A revised version of the list (developed by their articling students) was circulated, with some initial suggestions regarding cases that should be added / removed.

Karen Jensen suggested that members of the Committee review and comment on the list.

Justice Gleason agreed, inviting feedback from the Committee for review.

Justice Mactavish also agreed, though noting that the Committee shall need to consider the appropriate caveat to put on the list to advise self-represented litigants that this is not an exhaustive listing of all cases.

Action: Peter Engelmann and Karen Jensen to circulate an electronic copy of the list for review.

Barbara McIsaac, Q.C. questioned the proposal to organize the list according to subject categories, given the primary purpose of the list to exempt parties from filing full print copies of cases.

Peter Engelmann noted that there was now a secondary purpose, being to provide some recommendation of key cases in particular practice areas.

Justice Gleason added that the primary purpose may eventually be overtaken by a Rules amendment, but that an appropriate caveat might allow progress on the secondary purpose but this will need to be explored further. She suggested language for a caveat: “pending amendment to the

Rules, these authorities need not be cited in full – this list represents cases that are commonly cited but is not a complete list of cases that may be relevant to your particular issue.”

Andrew Baumberg provided a brief update regarding progress on the related amendment at the Rules committee, which has been published in Part I of the Canada Gazette, but not Part II.

c. Publication of Court Decisions

Justice Mactavish provided background regarding the Federal Court’s practice of publishing decisions on its web site. A Notice sets out the new practice, under which final decisions, and selected interlocutory decisions, will be published on its web site, but interlocutory decisions with reasons and interlocutory decisions on a motion for stay of removal will be provided to CANLII and other third party publishers for publication.

Justice Gleason noted the Federal Court of Appeal practice, which hasn’t changed: all final decisions are translated and posted; interlocutory decisions which may be of relevance beyond the parties are also posted.

Andrew Baumberg also noted the new 48 hour time-line for publication of decisions, even if counsel had not confirmed receipt; this follows the practice of the Federal Court of Appeal.

Amélie Lavictoire added that the Federal Court of Appeal has launched a bilingual twitter account, which will advise members of the bar and public regarding news, such as practice directions, as well as decisions of particular interest. It was launched May 4.

d. Canadian Judicial Council (Use of Personal Information in Judgments and Recommended Protocol)

Justice Gleason has brought this issue back to the Federal Court of Appeal, and Justice Mactavish has done the same within the Federal Court.

e. Modernization

Justice Gleason reported that given new funding, the Federal Court of Appeal will implement an e-filing process. Amélie Lavictoire added that it is anticipated that e-filing will be available at the Federal Court of Appeal by early 2019, as the Court is currently reviewing its needs and requirements in this respect.

Andrew Baumberg added that the Federal Court process is being upgraded; he also explained the proposed e-process pilot for immigration cases, under which parties’ documents and the tribunal record would be submitted electronically.

Athanasios Hadjis asked whether a similar option might be available for Labour Tribunal cases, given the considerable workload at the board to provide print copies of the full record, and its progress in developing electronic versions of its record. In cases involving self-represented litigants, out of caution, the board often provides the full certified tribunal record to the court in print format, but it is not clear what is done with it, or why. It is a lot of work to send a print copy of the CTR. Justice Gleason noted that the Federal Court of Appeal does not have the infrastructure to allow for a fully electronic process for cases on appeals but that parties may on a case-by-case basis seek an order authorizing filing of documents via CD or flash drive, in which event a paper compendium of the documents to be referred to during the hearing is usually required.

Athanasios Hadjis noted a case involving a part of the CTR that was left out due to solicitor-client privilege, and this was then challenged, but the Board was not included in the subsequent Court process regarding the challenge.

Action: To be discussed at next meeting, following internal discussions.

f. Long-term Committee Agenda

No suggestions.

4. New Items for Discussion

No items received from the Bar

5. Federal Court of Appeal Update

Justice Gleason noted that Justice Woods has adopted supernumerary status, and Justice Trudel retired. As for workload, outside of Ottawa, dates are available for the Fall, whereas in Ottawa there is a backlog to Spring 2019. The Court is exploring the possibility of a modified sitting schedule in Ottawa, with an increased number of Ottawa sittings per week.

On the Rules, there is an *ad hoc* Rules sub-committee struck to explore the feasibility of allowing Quebec litigants, on consent, to follow certain Rules of the Quebec Rules of Civil Procedure, given that the *Federal Courts Rules* are considered to be particularly different from the Quebec Rules.

6. Federal Court Update

Justice Mactavish noted that Prothonotary Morneau retired, and Prothonotary Steele was appointed to the Montreal office. Other appointments include Justices Walker, Norris, Favel, and Grammond, and Prothonotary Ring in Vancouver replacing Justice Lafrenière.

Regarding workload, as noted at the last meeting, the Court remains in the “eye of the storm”: there is a significant backlog at the IRB, which was allocated funding to allow the hiring of many new board members and associated staff; there are also many cases now being filed under the new patent challenge regime; and caseload increases are on the horizon in other areas.

Confidentiality Orders

Justice Mactavish noted that the Court practice related to confidentiality motions under Rules 151 and 152 is under review – the draft report provides a brief survey of some of the issues.

Sandy Graham raised a question regarding Justice Fothergill’s work on legislative amendments. Andrew Baumberg responded that the Rules sub-Committee was tasked with developing a list of practice ‘issues’ that were not amenable to resolution by amendment to the Rules, but which instead could only be resolved via legislative amendment.

Andrew Raven asked, regarding publications of court decisions, whether it might be possible to include an annotation when a case is under appeal, as is often done by administrative tribunals. Andrew Baumberg noted that this might need to be considered via the Courts’ publication engine, run by LexUM, which also oversees publication of SCC decisions.

Action: For further discussion at the next Committee meeting following verification as to feasibility.

7. Next Meeting

Justice Gleason proposed a follow-up meeting before the end of the year, to be scheduled following a survey by Andrew Baumberg amongst members of the Committee.