

**FEDERAL COURT – COUR FÉDÉRALE
BENCH AND BAR LIASON COMMITTEE (IMMIGRATION & REFUGEE LAW)
COMITÉ DE LIAISON ENTRE LA MAGISTRATURE ET LE BARREAU
(DROIT DE L'IMMIGRATION ET DES RÉFUGIÉS)**

***MINUTES OF MEETING HELD ON
Friday, May 14, 2010
Halifax, Nova Scotia***

Attendees: Sandra Weafer (DOJ Vancouver)
Mario Bellissimo (CBA Toronto)
Wendy Danson (CBA Edmonton)
Marvin Moses (OBA, Toronto OBA immigration section, secretary)
Chief Justice Allan Lutfy (FC)
Gordon Maynard (CBA)
Justice Robert Barnes (FC)
Elaine Doyon (AQAADI)
Kerri Froc (CBA)
Mitchell Goldberg (CBA Quebec)
Michael Synott (DOJ Montréal)
Lorne Waldman (CBA Toronto)
Justice Judith Snider (FC) – Meeting Chair

By telephone:

Justice Michael Phelan (FC)
Ms. Dora Caron (Courts Administration Service, Ottawa)
David Matas (CBA, Toronto)
Ms. Diane Dagenais (DOJ Toronto)
Ms. Claudine Léger (Executive Officer, FC)

1. Agenda & Minutes

- (i) *Responsibility for Minutes*
Marvin Moses was asked to take Minutes for the Meeting

- (ii) *Review and Approval of Minutes of conference call of November 16, 2009.*
Changes to previous meeting minutes:
 - pt-2- add name, Mario Bellissimo, to attendee list
 - pt 1- page 2 bottom – change “Respondent” to “Applicant”.Minutes approved.

- (iii) *Welcoming Remarks from the Federal Court / Update*
 - *Overview of recent statistics and trends*
 - *List of Certified Questions*
 - *Other*

Justice Snider provided an update.

It was noted that there were 6,711 JR's commenced in 2009 – up from the prior year of 5,687 in 2008.

For 2010, there were 2426 files commenced in the first 4 months of 2010, an increase of 15%.

There was a larger increase in RPD cases, increasing from 1091 in 2009, to 1407 in 2010.

Stays – The data is difficult to track as some are urgent Stays and some are during the regular Stay court days. Some are not heard. Some are resolved and withdrawn without the need to be heard.

For urgent ones, there were approximately 200 in 2010, compared to 300 in the same period in 2009.

Generally about 20% of Stays are granted.

H&C Stays were discussed, specifically on the issue of whether H&C applications affect Removal of failed refugee claimants or not. This came up in the context of Bill C-11 and whether the 1 year Bar on H&Cs is necessary or not. Justice Barnes noted that it is hard to know how many Stays are granted for H&C cases in process as there are various factors considered in granting a Stay. As the Decisions do not state too much on the particulars of a given case in the Reasons, it is hard to know if the Stay is granted on the basis of an H&C application still outstanding, or whether on other factors.

Chief Justice Lufty queried whether DOJ has statistics on this. Ms. Weafer noted that each DOJ office does have statistics.

Justice Snider noted that there are a higher number of Stay cases filed than the actual number heard. The urgent Stay ones, we can try to obtain the total number filed, but we would not know the actual number that were based on H&C applications outstanding as a ground of requesting a Stay.

Justice Barnes noted that removal will be deferred by the Department if a H&C decision is shortly to be coming.

Chief Justice Lufty noted a reluctance to embark on a “make work project”.

Gordon Maynard noted it is a relevant issue to the Immigration Minister, as the Minister believes that H&Cs are clogging the system.

Lorne Waldman noted that H&Cs are not a bar to removal according to a decision by Justice Pelletier and therefore Mr. Waldman did not understand the Minister's reasoning.

It is not clear that there will be a Statutory Stay after RAD proceedings are initiated.

Justice Snider stated that the Court will try to give the number of stays heard. DOJ may have to assist with any statistics they have on the number of Stays filed, heard and granted.

On the subject of Certified Questions, Justice Snider noted the list is up to date to March 2010.

2. Business Arising from Previous Meetings.

(i) *Common List of Authorities*

The List was prepared by Sandra Weafer and Mario Bellissimo. Justice Snider suggested that it be edited down to about 36 cases, as it is currently too lengthy. Justice Snider further suggested that Mario and Sandra speak further prior the end of May 2010, in order that it be finished by the end of Summer 2010.

(ii) *Restriction on Identification of Vulnerable and Other Persons (Applicants) and Other Privacy Issues (sensitive information and privacy protection)*

Justice Snider noted an increasing sensitivity by counsel to this, and suggested that counsel should seek to have the restriction on identification in place prior to having the case heard.

3. CBA / Department of Justice Items

(i) *Scheduling deadlines within Leave Orders*

Mario Bellissimo suggested that there needs to be some flexibility and is working with Diane Dagenais on this matter. Justice Snider noted that she will take the matter under advisement, and agreed that the main concern is maintaining flexibility.

Currently it is taking 120 days to get a hearing date, up from the usual 90, but that by September, it will again be down to 90 days. Currently, where Leave is granted, the cases are being held for 30 days before a court date is being set.

Chief Justice Lufty noted that Montreal has seen similar delays. He further suggested putting the matter over to the next meeting and seeing if anything new arises in the meantime.

Justice Snider noted that 302 Leaves were granted in the period January 1, 2010 to April 30, 2010. She further noted that it is logistically hard to then change the hearing date after it is set.

(ii) *“Ghost” Representatives*

Mario Bellissimo noted that in his research he reviewed about 2200 Leave Applications.

The focus was on the “care of” addresses.

Where there were repetitive addresses, it could be used to identify these Ghosts.

Mr. Bellissimo investigated further by calling many of these persons and found that in 58% of the cases, it lead to a non-lawyer.

He suggested having Form 301 amended to add a distinct address for the Applicant and for the Counsel of Record.

Keri Kroc raised the issue of whether a revision of the Form would resolve the problem. She suggested a pilot project but Justice Barnes noted there has been a pro bono project underway through the Advocates’ Society.

Justice Snider asked that the matter be tabled for further consideration of the proposed changes.

(iii) *Federal Court website*

Mario Bellissimo thanked the Court for the changes made on the Website. The Website does a good job of explaining the roles of parties. The CBA is becoming more vigilant in the form of messaging done by Courts and other government parties.

Chief Justice Lufty noted that Justice Barnes is responsible for the changes. Justice Barnes asked that suggestions be sent to him for review.

(iv) *Federal Court Policy – who considers application for leave when stay refused or denied?*

It was noted that the Justice who grants the Stay will also be responsible for the Leave Application.

If the Stay is refused, would the same Justice hear the Leave Application. The answer was “not necessarily”.

4. Varia & Next Meeting

The next meeting will likely be by teleconference in November 2010.

There was also brief discussion of the FC Registry in Vancouver having issue with some wording in the Affidavit of Service.

Minutes prepared by Marvin Moses