

**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 13, 2011***

Attendees:

Chief Justice Lutfy (FC)
Justice Robert Barnes (FC) – Committee Chair
Justice Michel Shore (FC)
Justice Yves de Montigny (FC)
Justice Russel W. Zinn (FC)
Justice Hughes (FC)
David Matas (CBA, Winnipeg)
Kerri Froc (CBA Staff lawyer, Ottawa)
Mario Bellissimo (CBA Toronto)
Mitchell Goldberg (CBA Montreal)
Sandra Weafer (DOJ Vancouver)
Ms. Diane Dagenais (DOJ Toronto)
Richard Kurland (Observer)
Marshall E. Drukarsh (Observer)
Andrew Baumberg (Executive Officer, FC, Ottawa)
Dora Caron (Registry, FC, Ottawa)
Nathalie Daigle (Counsel, FC, Ottawa)
Teleconference : Wendy Danson (CBA Edmonton), Elaine Doyon (AQAADI), Michael Synott (DOJ Montréal)
Regrets: Justice Phelan, Lorne Waldman (CBA Toronto), Gordon Maynard (CBA Vancouver)

1. Welcome, Agenda & Minutes

- (i) Responsibility for Minutes - Ms. Daigle
- (ii) Review of Minutes for January 13, 2011 – adopted
- (iii) Welcome by the Committee Chair: Update – Court statistics

Justice Barnes noted that there were 1000 more leave applications commenced in 2010 than in 2009 (4684 in 2010 compared to 3626 in 2009) and that the leave approval rate is around 17% (when the discontinued files are removed from the calculation). The backlog of cases is slowly dropping.

2. Business Arising from Previous Meetings

(i) Bill C-11

Justice Barnes asked for comments on Bill C-11, the *Balanced Refugee Reform Act*, which received Royal Assent on June 29, 2010. This Bill gives the Minister the authority to set processing time limits in the Regulations.

Mr. Goldberg noted that the Bar opposed the fifteen-day period to appeal a decision to the Refugee Appeal Division (RAD) as being too short. There will be review applications to the Federal Court regarding denials of extension.

Another member of the Bar added that appeals must be filed and perfected no later than fifteen working days after the Refugee Protection Division (RPD) decision and *written* reasons are received by the appellant (likely some time after the decision is communicated orally). A perfected appeal is understood to include an application to appeal, the decision and written reasons being appealed, and a memorandum of argument and supporting affidavits.

Justice Barnes noted that it may be possible to ask for an extension of time. **Justice Hughes** questioned how the tribunal record could be obtained in fifteen days. A member of the Bar answered that the IRB will send a transcript with every negative decision.

A secondary issue, arising from the last meeting, was addressed with respect to judicial review applications in Humanitarian & Compassionate (H&C) Grounds cases. The Court provided a short statistical report regarding stay applications in the context of H&C cases. **Mr. Matas** observed that the Bar found the statistics to be useful.

(ii) Common List of Authorities

Mr. Baumberg reviewed an updated list of new cases to add to the Common List of Authorities. A Practice Direction will be issued by the Court to announce the amendment. **Mr. Bellissimo** (CBA) and **Ms. Weafer** (DOJ) offered to publicize the Practice Direction by adding a link on their respective web site and / or circulating it to their groups.

A member of the Bar asked whether pre-internet authorities could be put on the internet. **Justice Barnes** explained that the Court has limited resources for new projects/initiatives. **Chief Justice Lutfy** noted that all reported decision are available on QuickLaw, but for a fee. A member of the Bar noted that not all cases were reported in the early days. **Justice Barnes** suggested that the common book of authorities could include some of these older cases.

(iii) Time period allocation in Orders for judicial review

A revised Guide for Leave applications, including revised timelines, was issued on May 3rd to Judges. **Justice Barnes** reminded the Bar that counsel can write a letter, to be brought to the attention of the judge granting leave or the judicial administrator thereafter, if they have a special case. If required, additional time can be allocated. If this is not working, the Court would like to know.

(iv) Development of Screening Mechanisms for non-lawyers filing Leave Applications

Mr. Bellissimo recommended that the Leave Application form include both the applicant's address as well as the representative's address. **Justice Barnes** suggested that a solution might be for the decision-maker (whether the IRB or another federal board / tribunal) to inform the litigant of what is permitted in terms of representation and that the Court will not allow the representative to appear before the Court if not authorized, legal counsel. **Justice Barnes** asked the Bar to examine this further and to come back with a proposal at the next meeting (but noted that it may wish to wait for Bill C-35 to be proclaimed).

(v) Restriction on Identification of Vulnerable Persons in Federal Court Cases

Justice Barnes asked why there aren't more applicants asking that their identity be protected in the Court's decisions. A member of the Bar responded that the legal aid programs do not cover extra costs for motions for confidentiality. **Justice Hughes** asked if the main problem is that the personal information is

accessible on the Court's website. In that case, he suggested that the site be adjusted to protect the identity of applicants, while the paper file could remain unchanged. A member of the Bar noted that this was done, at least in part, in that people can no longer do a *general* internet search for personal information on the Court's website. However, personal information remains available directly through the Court website's own docket / decision search engines.

Justice Barnes noted that if there are legitimate reasons, an informal motion, brought by letter on consent, or orally at the hearing, may be sufficient for the Court to allow the use of initials instead of full names. **Chief Justice Lutfy** asked the Bar whether it would be preferable for the Court to anonymize all immigration and refugee cases.

A member of the Bar noted that being able to bring an informal motion is a very important development that may be sufficient for now, but that the news must get out to members of the Bar. **Chief Justice Lutfy** reminded the Bar that this way of proceeding has existed since 1998, based on Rule 55, which provides that in special circumstances, the Court may vary a rule or dispense with compliance with a rule. Thus, parties may send a letter to ask that the party's initials be used in the decision instead of full names. **Justice Barnes** asked that the message be circulated.

Mr. Matas recommended that public access be the default, with the onus on the claimant to show why the case should be confidential. Justice **Shore** agreed that the anonymization of immigration and refugee cases should be done on a case-by-case basis, the same way it is done for confidentiality orders. **Justice Hughes** suggested that the Rules could be amended to provide that the Court may, on the request of a party, order that the names be kept confidential (e.g.,: "On request by any party, the style of cause will be anonymous unless there is good reason for it to be public.") **Justice Barnes** noted that a consensus with the Bar will be necessary on this important question.

(vi) Article – University of Denver

At the previous meeting, it was noted that there were informal initiatives within the Bar to develop individualized statistics. **Justice Barnes** had encouraged the Bar to provide such statistics to **Mr. Baumberg**. It was noted that a study on leave decisions in IMM cases will be discussed at the upcoming meeting of the Liaison Committee of the Federal Courts and the Montreal Bar in early June. **Mr Kurland** will circulate statistics on leave decisions he has obtained pursuant to access requests made to Citizenship and Immigration Canada. The Bar asked that this topic be on the agenda for the next meeting.

(vii) Leave applications: No reply from Department of Justice

After being informed, at a previous meeting, that in quite a number of cases, no reply from the Department of Justice (DOJ) was filed, **Ms. Dagenais** and **Ms. Weafer** informed the Committee that Justice lawyers received an internal notice reminding them to inform the Court and the other party if no reply is going to be filed. Therefore, in all cases, a reply or a letter should be filed. If not, **Ms. Dagenais** asked the Court to let the DOJ lawyers know. **Justice De Montigny** noted that now, however, replies are being filed. **Mr. Baumberg** added that it would be problematic to issue an individual reminder to a DOJ lawyer if similar reminders are not also provided to applicants. **Ms. Dagenais** agreed and noted that if this continues to be a problem after the issuance of the notice, she would like to know but could wait to be informed at the next meeting, in 6 months.

(viii) Address for service – Attorney General

A request was made to DOJ to consider posting an address for service to make it clear for litigants. **Justice Barnes** noted that the Attorney General address for service is not yet online. **Ms. Dagenais** confirmed that this has still not been rectified, but that it is a communication matter that will be addressed.

3. CBA / Department of Justice Items

(i) Access to Court decisions (pre-1997)

This topic was discussed under the previous item entitled “Common List of Authorities”.

(ii) Visa Officer files (15 or 60 days?)

Mme Doyon explained that a pilot project is under way, following an initiative of the Minister of Justice, by which files from outside Canada are sent for processing in Canada, with the decision then communicated to the applicant outside Canada. However, the delay for submitting an application for leave depends on whether the decision is made within or outside Canada (15 days or 60 days). **Justice Barnes** suggested that in the event that there is a prejudice to a party, the delay can be extended, on appropriate grounds, by the Court. This item is to remain on the agenda for the next meeting.

(iii) Federal Court Training Session / National CLE

Mr. Bellissimo thanked **Chief Justice Lutfy** and the CBA CIC division for conducting the CBA Continuing Legal Education conference that was scheduled for **May 12 - 13, 2011**, in Gatineau. **Chief Justice Lutfy**, in turn, thanked **Ms. Chantal Arsenault** and **Mr. Mario Bellissimo** for having worked on this project all year long.

4. Federal Court Items

(i) Court Update – Practice Directions / Rules Committee / etc.

Justice Hughes, Chair of the plenary Rules Committee, explained that there are three main sub-committee projects at present.

The first involves procedural amendments compiled by members of the Bar, Registry and judiciary, divided into two segments. The first segment includes non-controversial items being collated for the legislative drafters; the second involves procedural amendments that may be more controversial and require greater consultation. These proposed amendments have been described in greater detail in a Discussion Paper, to be posted on the Courts websites shortly. Comments are welcome.

The second project concerns technology, with the sub-committee’s mandate to review the *Federal Courts Rules* to ensure that there are no obstacles or impediments to technology. **Justice Mosley** presides over this sub-committee. A Discussion Paper on Technology will be posted on the Federal Courts websites in the near future for comment.

Finally, the last committee is focusing on a Global Revision of the *Federal Courts Rules*. The mandate of this sub-committee, chaired by **Justice Stratas**, is to examine the Rules as a whole and determine whether they need to be revised or changed in terms of their approach or architecture, given that it has been over twelve years since they were first implemented. For example, the sub-committee is considering whether “proportionality” should be spelled out at the outset of the Rules. The sub-committee on global revision also prepared a draft Discussion Paper, to be posted on the Courts websites and circulated for comment.

(ii) Summer Recess

The Federal Court will have a reduced schedule for both general and special sittings from July 25 to August 5, 2011.

(iii) General Sittings

Justice Hughes explained that an amendment will be made to the rule on general sittings. The present rule provides for general sittings in Ottawa every Tuesday and Thursday. The rule will be modified to have only one general sittings day in Ottawa (every Wednesday).

5. Varia & Next Meeting

Chief Justice Lutfy informed the Committee members that two judge positions are vacant and that Bill C-11 creates four new positions. Therefore, there will soon be six vacant positions.

The next meeting of this liaison committee will be scheduled in the Fall.