

Federal Court



Cour fédérale

BENCH & BAR LIAISON COMMITTEE (CITIZENSHIP, IMMIGRATION & REFUGEE LAW)

September 30, 2020

MINUTES

1. Agenda / minutes [June 11]

Approved per Daniel Latulippe and Deborah Drukarsh.

2. COVID-19 Pandemic Update

Chief Justice Crampton presented PPT slides with an overview of the current schedule and expected caseload. Most cases are proceeding with virtual hearings, which are very efficient.

Robert Blanshay expressed concern with the resistance from the IRB and departmental decision-makers to providing a certified tribunal record (CTR). We are already heading into October, still with no access to justice. What more can be done to get these files moving?

Chief Justice Crampton acknowledged the issue. His understanding is that the IRB is prioritizing 1st instance hearings.

Robert Blanshay questioned why the other IRB divisions cannot follow the same digital process as the RAD.

Andrew Baumberg suggested that we re-constitute the modernization sub-Committee to discuss practical steps with representatives of the Bar and the IRB.

Daniel Latulippe raised a question regarding delay, in a specific file, with the leave decision.

Chief Justice Crampton noted that the unavailability of a CTR is the main obstacle to issuing leave granted Orders. That said, he noted that there are resource issues within the Courts Administration Service (CAS), which has diverted a significant part of its budget to pandemic response.

Mario Bellissimo: will the lower inventory impact funding?

Chief Justice Crampton: CAS has requested additional funding to address operational issues related to the pandemic.

Patrick O'Neil: there is currently a backlog of dismissed applications for leave and judicial review. For the most part, the Registry is processing June / July dismissals, though there are a few cases going out this week that pre-date the pandemic.

(i) COVID-19 Practice Direction: Update #6 - September 8, 2020

(ii) consolidated COVID-19 Practice Directions - June 25, 2020

Chief Justice Crampton noted that Update #6 was issued to clarify the status of Orders issued during the pandemic. The FC's position is consistent with the Direction of Chief Justice Noël of the Federal Court of Appeal. The listed administrative processes cross-referenced to the consolidated practice direction continue to apply. He thanked the bar for its input on this latest Practice Direction .

(iii) Planning for hearings

(iv) Tribunal Record – Sharepoint Access

These items were addressed above.

3. Motions: stay of deportation

Justice Strickland: the Court is now at the final stages of review of the revised wording. There will be an opportunity for final comment once the revised draft is available.

4. Motions: stay of release from detention

Justice Diner noted the collaboration between members of the Bar, Court, and Immigration Division to develop a draft protocol, which was circulated in September to the Committee for comment. The working group will continue its work with a review of the comments received.

5. Toronto pilot project – settlement

Justice Diner presented the results of the pilot. We are now satisfied that there has been a significant increase in the backfill rate and reduction in last-minute settlement, which together have improved the efficiency of the Court process. As a result, it has been decided to expand the scope of the pilot. Some feedback from the Department of Justice suggested shifting the CTR time-line from 21 to 30 days. However, given that the RAD is currently processing CTRs efficiently, there is no need to increase the time-line for CTR preparation.

Banafsheh Sokhansanj asked for advance notice of the timing of the expansion.

Justice Diner confirmed that there will be no change on the pilot until at least mid-November, though it may be extended to early new year. It may need to wait until we can get increased access to the CTR.

Banafsheh Sokhansanj asked regarding the status of the proposed edits to the Notice.

Action: Andrew Baumberg will circulate a revised draft, including changes approved by the Court, for comment by the Committee.

Andrew Baumberg noted a separate issue raised earlier by the IRB regarding reasons for consent judgments – the Board does not receive sufficient information to ensure that the error is not repeated. Justice Diner added that there are also some concerns within the Court regarding the sufficiency, at law, of the reasons provided by counsel for seeking a consent judgment.

Action: relevant jurisprudence from the Federal Court of Appeal is to be circulated.¹

Deborah Drukarsh responded that we canvassed the issue in past meetings. The Board is not the Department of Justice counsel's client; the Minister is. The issue will be raised again within the Department.

Mario Bellissimo suggested that some members of the CBA or other organizations discuss this with the Department's representatives.

Robert Blanshay will return to the CBA executive to establish a small working group to liaise with the Department.

CARL would also like to participate in this working group.

Action: Robert Blanshay and Diane Dagenais to establish a working group (re: disclosure of reasons for requesting a consent judgment) including interested members of the CBA, CARL, and DOJ (and any other Committee organizations).

Chief Justice Crampton noted that some judges are not willing to sign a consent judgment unless there are sufficient grounds provided. There is therefore some urgency to address this.

Robert Blanshay noted that in many cases, there is a memorandum of fact and law on the record, which provides some context regarding reasons for settlement.

¹ *Garshowitz v. Canada (Attorney General)*, [2017 FCA 251](#) at paras. 17-19; *Advantage Products Inc. v. Excalibre Oil Tools Ltd.*, [2019 FCA 22](#); *Canada (Attorney General) v Burnham*, [2008 FCA 380](#).

6. Ghost representatives working group

Justice Diner noted the inherent challenge regarding people who are not authorized to practice in Federal Court, and the proposed amendment aims to get more transparency of the issue. Additional work is needed on the amendment.

Furthermore, a white paper was prepared on the ghost representative issue, with some involvement from members of the Bar (Chantal Desloges, Mario Bellissimo, Richard Kurland, and BJ Carusso).

Mario Bellissimo added that we are still hoping for a multi-pronged approach:

- Rule amendment
- Declaration on the Notice of Application
- Stronger language on Federal Court website regarding who is authorized to practice law
- Simplify language in Rules – move from solicitor to lawyer

Robert Blanshay noted the CBA's endorsement of these suggestions. This is an access to justice issue. He has seen a range of problems, including Notices of Application filed with the wrong issues identified. It is a priority to change the language of the website. The proposed change to "lawyer" / "avocat" is aligned with changes to provincial rules / regulations.

Justice Diner: if anyone else wishes to join the working group, please advise Andrew Baumberg.

Deborah Drukarsh asked whether the Rule amendment affects the ability of law students to appear in Court.

Andrew Baumberg: the amendment is simply a disclosure obligation – it does not authorize law students to appear in Federal Court.

7. Update: Practice Guidelines For Citizenship, Immigration, And Refugee Law Proceedings

Justice Diner noted the resistance from the Bar regarding the blacklining proposal. In addition to the proposed revision to the Guideline being overtaken by pandemic related issues, there is also a Court initiative to consolidate all the practice directions.

Andrew Baumberg: it may be preferable to work towards the new consolidated practice guidelines, which have progressed within the Court this Summer, rather than issuing an interim update to the IMM practice guidelines based on the old framework.

8. Common list of authorities

Justice Diner: there has been progress on an updated Common List arranged by Court level and key areas of law. There is also an alphabetical listing. The listing would be published along with a strong caveat.

9. Subcommittee for Assistance of Unrepresented Litigants

Nicholas Woodward reported that the program has now expanded to Vancouver, Calgary, Ottawa and Montreal. In each registry office, lawyers have volunteers to act as regional contact. Uptake is still low, probably due to ongoing pandemic-related issues.

Justice Diner presented the various resources available on the Court website for litigants.

The Chief Justice added that there is a remote hearing guide setting out the Court's policy framework, Robert Blanshay asked about the financial assessment under the pro bono pilot, and whether there is screening for involvement by ghost consultants.

Justice Diner: there is a rigorous vetting process.

Andrew Baumberg added that the vetting is done by the external pro bono lawyers, not the Registry, which simply provides the referral information.

10. Immigration and Refugee Law Moot

Zoë Sebastien reported on the work of the sub-Committee, which has committed to proceeding with the moot in 2021, with 5 schools now confirmed. The deadline is October 15 to register, and the moot will take place in March 2021.

Cheryl Robinson then presented the moot problem.

Judy Michaely provided a further update regarding the moot website², moot procedure, and fundraising. She acknowledged CARL's donation that will greatly facilitate holding the moot, and the Department of Justice's financial support for translation of the moot problem. On behalf of the CBA, Robert Blanshay expressed support for the moot.

11. Next Meetings

Chief Justice Crampton noted that Justice Norris has agreed to take on the role as chair of this Liaison Committee, and thanked Justice Diner for the fantastic job that he has done in his years on the Committee. It has been one of the most active committees during his tenure. Justice Diner will be moving over to chair the technology committee.

Mario Bellissimo expressed his appreciation for Justice Diner's remarkable work, and welcomed Justice Norris to the Committee.

Robert Blanshay endorsed these remarks, noting Justice Diner's strong leadership.

On behalf of the Department, Deborah Drukarsh acknowledged the extraordinary work that Justice Diner has accomplished.

On behalf of CARL and RLO, Anthony Navaneelan reiterated these remarks.

Daniel Latulippe thanked Justice Diner for his exceptional and well-appreciated work.

Justice Norris expressed his commitment to continuing the work of this Committee and ensuring collaboration with both sides of the Bar, which are tremendously important for access to justice.

Andrew Baumberg suggested another meeting before the end of year.

Robert Blanshay agreed.

Justice Norris: we will circulate a survey for possible dates and then confirm.

END OF MEETING

² <https://ilm-cpdi.ca/>