

**BENCH & BAR LIAISON COMMITTEE (CITIZENSHIP, IMMIGRATION & REFUGEE LAW)****June 4, 2018 Teleconference**

Attendance: Justice Alan Diner (Chair), Chief Justice Paul Crampton, Justice Sylvie Roussel, Justice Michel Shore, Justice Keith Boswell, Justice Henry Brown, Mario Bellissimo, Chantal Desloges / Erin Roth (CBA), Michael Battista, Sandra Weafer / Daniel Latulippe (DOJ), Mitchell Goldberg (CARL), Jack Martin (RLA), Andrew Baumberg.

1. Welcome / Approval of minutes of April 20, 2018 meeting.

Minutes were approved.

Justice Diner noted the key goal for the meeting: finalization of 3 key initiatives for launch by this Fall.

2. Business Arising from Previous Meetings

Justice Diner noted that there was little comment on the first two initiatives below, and the third (e-court) was already approved. On the other two initiatives, draft documents were circulated that integrated feedback from the court and bar.

(i) Practice Guidelines for Citizenship, Immigration, and Refugee Law Proceedings.

Mitch Goldberg: good.

Mario Bellissimo agreed.

Daniel Latulippe agreed, noting the documents reflected a very fair and correct integration of feedback.

Jack Martin agreed.

Chantal Desloges agreed.

Andrew Baumberg then noted parallel efforts to proceed with the Rules committee re anonymity.

Justice Diner noted the incomplete part regarding the Notice (publication), which was issued on Friday.

Chief Justice Crampton noted that the Notice regarding publication of decisions responds to an immigration bar request to have all final decisions and stay decisions public, even though the court does not consider recital-type final JR decisions or stay decisions to be precedents.

(ii) Toronto pilot projects**a) Settlement**

Justice Diner noted the key changes in the Notice made in response to suggestions from DOJ.

Chantal Desloges: this strikes a good balance, not 'giving away too much' but providing enough.

Jack Martin agreed. Most concern from counsel related to overseas VISA cases.

Mitch Goldberg agreed that this strikes a good balance.

b) E-Court working group

Already approved. Will move into implementation.

(iii) File Retention schedule

Justice Diner noted that any files dismissed at the leave stage may be retained for 7 years, whereas those that go to a full hearing would be kept for 15 years; 'tombstone' data and Orders to be kept in perpetuity.

Chief Justice Crampton noted the Court's lack of long-term archive space, and efforts to increase e-court infrastructure. The majority of the Court is amenable to working with an entirely electronic record.

Justice Diner noted a preference to have the OCR and electronic tab feature in the electronic record.

(iv) Publication of Decisions

Already addressed.

(v) Legal aid update

Justice Diner noted this key issue, related to the IRB's increased caseload arising from the influx of immigrants. The Court is expecting a much heavier caseload, also of concern for the public and private bar. He referred to a recent decision by Justice Shore related to a Pre-removal risk assessment, often the last review for an individual facing removal from Canada. Availability of legal representation in the immigration field is an issue. He raised the possibility of developing a pro bono program that includes the large law firms that typically work outside the immigration field.

Mitch Goldberg agreed that this is an interesting and positive initiative. In Quebec, there is a huge problem with legal aid being underfunded. The tariff is approximately \$600 from beginning to end for the refugee hearing process. There are many counsel with no experience, or oversight, taking on some of these cases. It is important to have more senior lawyers who can assist at least with oversight.

Jack Martin noted that in Ontario, the tariff is not so much the issue as the volume. It is not clear how many cases could be assisted by pro bono counsel. If there are fewer legal aid certificates issued, this initiative might be helpful, though it may be preferable to get increased legal aid funding.

Justice Diner noted that in the Lifeline Syria program, there was a huge increase in counsel assisting from outside the refugee lawyers community.

Jack Martin noted that in Ontario, if there is a high volume, Legal Aid's threshold for merit assessment might go up. There may be place for pro bono assistance at the leave stage, before a legal aid certificate is granted. RLA would like to be included in the discussion.

Justice Shore suggested students from upper levels of law schools to assist, with collaboration between this committee's representative institutions and universities.

Chantal Desloges noted that the CBA already has a working group in place to liaise with the government to help manage the irregular arrivals. The CBA is definitely interested. Key concern: any good refugee lawyers is already overworked. There is a high degree of volunteer burn-out amongst the same group of senior lawyers usually called upon.

Justice Diner responded that part of the reason for the discussion is to have a framework in place when there is a significant increase in the paid work, to include a broader pool of volunteers and participants.

Jack Martin added, in terms of increasing the number of lawyers available to take on legal aid certificates, that the legal aid office has a program to mentor new lawyers.

Mario Bellissimo noted, regarding the CBA, that we should try to reach out to different bodies and individuals to get professionalism hours recognized. Also, within the IRCC and DOJ, there should be efforts to stream some individuals out of the immigration system, where applicable. Also, LawPro should be included in any discussions, given that there are more malpractice issues raised in this area than others.

Justice Diner supported these suggestions.

Daniel Latulippe added that we are going to get a wave of applications in Federal Court sometime in 2019. DOJ lawyers have been going to legal aid clinics to give primers for young lawyers. He added that it is difficult to appear in court against an unrepresented, or underrepresented, litigant. Someone from DOJ will participate in the discussion.

Sandra Weafer added that it also saves DOJ resources when the other party is well-represented.

Chantal Desloges suggested that we might be able to leverage the legal clinics.

Mario Bellissimo reiterated the question whether there is any possibility, via IRCC and others, to look at other streaming options.

Daniel Latulippe suggested that this would require input from CBSA and CIC.

Justice Shore noted that in the USA, they hired young lawyers to assist in the refugee area. He encouraged a mentorship program for law students.

Action: send your organization's representatives to Andrew Baumberg re: pro bono working group.

(vi) Feedback on Practice Directions (informal motions / scheduling)

Raised at previous meetings.

(vii) Rules Committee Update

Andrew Baumberg mentioned the ghost representative amendment to the *Citizenship, Immigration and Refugee Protection Rules*. For possible follow-up separately. One possible issue is whether it should cover both non-lawyers and lawyers' work off the record.

Mario Bellissimo suggested that it was proposed, initially, to cover non-lawyers. For follow-up separately.

Action: send your organization's representatives to Andrew Baumberg re: ghost representative working group.

Jack Martin would like to participate in any discussions on this issue.

Chantal Desloges will be the CBA representative.

3. New Items for Discussion

Justice Diner noted efforts in the last couple years to formalize the structure of the committee and prioritization of key projects to make concrete progress on specific initiatives. Additional suggestions were invited for Committee focus.

Chantal Desloges: the only issue relates to the ghost representative amendments, but this is covered. She will get input from the wider CBA membership.

Justice Shore expressed concern regarding the number of individuals facing immigration issues without legal counsel, particularly in Quebec. [addressed via the Legal Aid / pro bono item, above]

Mitch Goldberg was heartened to see how much has been accomplished in the last couple years. The anonymity procedure is key. He has no new items on the agenda. The liaison committee is very effective.

Daniel Latulippe will canvass members of the department for issues. He agreed that this was a very productive year for the committee.

4. Next Meetings

(i) Fall 2018 (November 28 in Toronto)

(ii) Spring 2019, likely in Winnipeg.

A future meeting will be planned for Montreal.

5. Varia

The Chief Justice noted that we need to keep a watching brief on late settlements, as well as on the anonymity procedure. A real issue regarding the open-courts principle may arise if a high percentage of the Courts decisions become anonymized. Also, he encouraged the committee organizations to participate in the e-process pilot.

Close of meeting.