

**BENCH & BAR LIAISON COMMITTEE (CITIZENSHIP, IMMIGRATION & REFUGEE LAW)****Monday, September 13, 2021 (Microsoft Teams)****MINUTES****Attendance:** see [Annex](#).**1. Agenda / minutes [June 7]**

Approved.

2. Court Update & An invitation: Federal Court of Appeal and Federal Court 50th Anniversary Events

Chief Justice Crampton:

- relative to 2019, the IMM caseload is 19% higher
- significant variation from month to month in volume of stay motions – but volume is trending upwards
- settlement project – about 45% are being backfilled after settlement – the project will be expanded nationally in a few weeks
- to address a backlog, the Registry has significantly increased the number of leaves being forwarded to Court
- Judicial appointments
 - o The Honourable AVVY YAO-YAO GO - Appointed August 4, 2021
 - o The Honourable MANDY AYLEN - Appointed August 4, 2021
 - o The Honourable VANESSA ROCHESTER - Appointed August 4, 2021
 - o Prothonotary CATHERINE A. COUGHLAN - Appointed August 4, 2021
 - o Prothonotary TRENT HORN - Appointed August 4, 2021
- retirement – Justice Martineau (August) and Justice Barnes (November), with other retirements in 2022
- in-person versus virtual – nearly all cases are proceeding remotely, though with the option for parties to request an in-person hearing – we are getting few requests, mostly in non-IMM proceedings
- awaiting federal government policy regarding vaccination of employees
- we are guided by what parties want, though will need to make a determination if the parties have different views regarding the hearing type
- 50th anniversary events are outlined in the annex to the Agenda

3. Expansion: Settlement Project

Justice Norris: the expansion was tentatively set for September 30, which is now a national holiday – the revised plan is to start the Monday of the following week – October 4.

4. Sub-Committee: Record of the RPD / RAD

Justice Norris: the sub-Committee will be meeting soon, with Justice Strickland representing the Court. We are in discussion with the IRB to have it participate in discussions.

5. Sub-Committee: Online Access to Documents

Justice Norris: the sub-Committee has been struck and will be meeting on September 15.

6. Consolidated Practice Guidelines

Justice Norris: a draft Practice Guidelines was circulated to the Committee for discussion on June 7. Please provide any further comments by September 20 so we can then move ahead with the project.

7. Rules Committee Update – Annex B

Andrew Baumberg:

- 3 sets of amendments came in force on June 17
- 3 other sets of amendments were pre-published on April 10, and following review of public comments at the Rules Committee meeting on June 18 and then revisions that were reviewed at its meeting September

10, we are now proceeding with the final stage to refer them to the Minister's office (post-election) and then to PCO for GIC approval – tracking to be in force by end of year.

8. Ghost representatives working group

Justice Norris: the sub-committee recommended Rules amendments, and the amended Rule 5 came in force on June 17. The sub-Committee also recommended that the Court clearly indicate on its website who may represent an applicant in an IMM proceeding. The text presented to the Committee at the June 7 meeting has now been posted – see <https://www.fct-cf.gc.ca/en/pages/representing-yourself/practice-guides/how-to-file-an-application-for-leave-and-for-judicial-review-immigration#cont>

The sub-Committee has also recommended that similar language be used in material prepared by the IRB and Ministerial decision-makers when indicating applicants' right to challenge a negative decision in FC (i.e., to indicate that only a lawyer is authorized to represent the person) – for follow-up within sub-Committee.

Mario Bellissimo agreed with the proposal. In addition to clarifying who can represent a claimant when challenging a decision, there also remains an issue with basic information about the right to challenge a decision. Also, are there regularly situations when an immigration consultant is granted permission to represent a party?

Andrew Baumberg: presumably this falls within the exception, though it is his understanding that it is more often a family member who is granted permission.

Deborah Drukarsh acknowledged this issue regarding the information provided in tribunal-level decisions regarding the right to apply for judicial review and who may represent you.

9. Subcommittee for Assistance of Unrepresented Litigants

Andrew Baumberg: the online version of the triage / application form is now ready – upon review on September 10 with Michael Battista, we are running final tests of the page, including the process to forward email messages of intake forms to him. [Note: the web page was launched on the Court website shortly after the Liaison Committee meeting. See: <https://www.fct-cf.gc.ca/en/pages/representing-yourself/finding-legal-help/federal-court-legal-assistance-program#cont>]

10. Suggestions for Long-Term Committee Plan

Justice Norris raised a few items for consideration:

- there is now a protocol in place for stay motions in detention review contexts, though it may be helpful to develop a complementary protocol for an efficient Judicial Review application within the 30-day limit
- there have been multiple Applications for mandamus re COVID delays – the Court is open to a lead case if considered appropriate

Mario Bellissimo: agrees with the proposal for a lead case – perhaps one permanent stream case and one temporary stream case, though there may be some challenge in choosing an appropriate geography for a lead case.

Deborah Drukarsh: understands the underlying concern, though notes the variation across different cases and time-lines.

Erin Roth: although a lead case was proposed for a group of mandamus cases this Summer, the respondent (with detailed background information) indicated that there was insufficient commonality.

Justice Strickland: there may be questions regarding the availability of resources to process claims in a particular region / country. This may be very specific to a particular case, so difficult to address in a lead case.

Arghavan Gerami: supportive of the proposal for improving the efficiency of the process for judicial review of detention decisions.

Andrew Brouwer: RLO will participate in this detention review working group.

Mario Bellissimo noted possible synergy with Tribunals to support common digital infrastructure.

Andrew Baumberg noted discussions in the CBA Liaison / Rules Committees related to a Court modernization project. This was noted by Darlene Carreau as a priority for engagement with the tribunal community.

Chief Justice Crampton: modernization is not confined to the technical front. There is a need for procedural innovation – how can we get litigants before a judge more quickly and efficiently? Also, he asked for views regarding in-person versus virtual hearings.

Deborah Drukarsh: there could be a role for the IMM modernization sub-Committee to pilot new projects.

In-Person versus Virtual Hearings

Arghavan Gerami: in addition to pandemic-related concerns, there is a practical matter for private bar practitioners – it is much more efficient and less costly, especially for less complicated issues and routine appearances, to appear remotely. The remote hearing mode does allow for good oral advocacy.

Maureen Silcoff: agrees, particularly for clients on legal aid.

Erin Roth: agrees, though wishes to highlight one additional point. Efficiency has created one challenge. For more complicated cases, with a longer record, an electronic record is not sufficient for an in-person hearing. This results in additional cost for printing.

Andrew Brouwer: agrees. Although in-person appearances are appreciated, the virtual option is important to keep.

Mario Bellissimo: there are important efficiency gains, but there still is value with in-person hearings, not just for complicated cases but also to allow for training etc.

Justice Norris: preference for in-person hearings, but clearly there remain issues. The virtual option should be maintained for now.

Anthony Navaneelan: the in-person option is needed particularly for clients who see an in-person hearing as necessary in order to feel that justice is being done.

There should be no ‘burden to meet’ on a client who prefers an in-person hearing. Unless both parties prefer a remote hearing, it should be in-person.

Chief Justice Crampton: should the default remain on virtual hearing? We are still using the COVID-19 Update #7 Practice Direction.

Claudia Molina: is it possible to have a hybrid hearing, with people participating by different modes?

Chief Justice Crampton: this is a valid option, though there may be a perception that the party attending in-person has an advantage.

Justice Norris: there may be other considerations in play for the department of justice.

Caroline Perrier: not all courtrooms are equipped for hybrid hearings, though we could accommodate this on an exceptional basis.

Justice Strickland: most people currently agree with the default remote hearing mode until we have new updates regarding the science.

Justice Norris: agrees. We can revisit this at the next meeting.

Patricia Gamliel: some parties are not represented and may have difficulty with a remote appearance – they should be offered the possibility of in-person hearings.

Erica Olmstead: virtual hearings have generally gone well, but she has a preference for in-person hearings for the types of more complex matters in which she tends to be involved. There have been some challenges for conducting virtual hearings with larger records. Generally, there has been agreement with the Attorney General regarding the hearing format.

Cheryl Robinson: agrees, though the preference could be indicated in the Rule 5 notice, rather than having a default.

Justice Norris: the default virtual hearing mode will remain unless the parties have stated a preference otherwise.

David Matas: the typical leave order provides flexibility for parties to change certain time-lines. The leave Order could include this flexibility for hearing mode as well. E.g., the hearing is virtual, but parties may on agreement request an in-person hearing.

Chief Justice Crampton: we shall do our best to accommodate such requests on consent between parties.

Deborah Drukarsh: regarding self-represented litigants, where necessary the Court can conduct hearings by phone. Although not ideal, this may be the best option if there are concerns regarding in-person appearances and limited access to video-conference equipment.

It was also noted that there are different factors that might arise depending on the geography and hearing venue dynamics (including volume of other court hearings). Any indication of a preference for a hearing venue should be treated as just that – a preference, to be considered by the Court.

Where there is a request for virtual hearings, Justice counsel have appeared, and where there is a justified request for in-person hearing, we have proceeded on this basis. However, there are additional considerations – for in-person hearings, it requires counsel also to return to their workplace, which raises other practical constraints.

Meeting Chat:

Andrew Brouwer: Suggest maintaining status quo for the moment - remote by default during pandemic.

Arghavan Gerami: Yes, I agree at least until the pandemic safely issues are still ongoing.

Mario Bellissimo: I would agree until at least until late Spring of 2022 remote remain the default.

Maureen Silcoff: Yes, I agree

Richard Wazana: I agree

Preevanda Sapru: I agree

11. Next Meeting -- target for early / mid-December.

Annex – Virtual Attendance September 13, 2021

Jack Martin (Guest) Guest	Claudia Molina Outside your organisation		
Baumberg, Andrew Organiser	Crampton, Paul		
+14164364571	David Matas (Guest) Guest	MacLeod, Sarah	
Alyssa Manning Outside your organisation	Desrosiers, Marie	Mario Bellissimo Outside your organisation	Norris, John
Andrew Brouwer Outside your organisation	Drukarsh, Deborah Outside your organisation	Maureen Silcoff (Guest) Guest	Perrier, Caroline
Anthony Navaneelan Outside your organisation	Erica Olmstead Outside your organisation	Me Annabel E. Busbridge (Gu... Guest	Preevanda Sapru Outside your organisation
Arghavan Gerami Outside your organisation	Erin Roth Outside your organisation	Norris, John	Richard Wazana (Guest) Guest
Brown, Henry	Gagnon, Sarah	Patricia Gamliel (Invité) (Guest) Guest	Sokhansanj, Banafsheh Outside your organisation
Calendar Outside your organisation	Goswami, Monmi Outside your organisation	Perrier, Caroline	Song, Alethea
Cheryl Robinson	Khan, Nusra	Preevanda Sapru Outside your organisation	Strickland, Cecily Y.
		Richard Wazana (Guest) Guest	Switzer, Michael