

**BENCH & BAR LIAISON COMMITTEE (CITIZENSHIP, IMMIGRATION & REFUGEE LAW)****January 14, 2021**

Zoom Meeting

MINUTESAttendance: see [annex](#).**1. Agenda / minutes [September 30]**

Justice Norris thanked members of the Committee for their support during these difficult times. No additions to Agenda. Minutes approved, per Jack Martin / Deborah Drukarsh.

2. COVID-19 Pandemic Update**(i) Virtual hearings & (ii) Tribunal Record – Sharepoint Access**

Chief Justice Crampton provided an update:

- A draft Practice Direction (#7) is being circulated to the Bar Liaison chair for comment – he reviewed it online with the Committee
- March 16 – December 31: close to 1000 hearings by teleconference and 725 by Zoom
- Cross-examination over Zoom has been working quite well, even if some counsel prefer in-person practice
- Zoom hearings will likely continue after the pandemic, at least for JRs
- The backlog is being cleared

Patrick O’Neil:

- Registry is now processing mid-November leave dismissals, with the Registry aiming to return to the previous 2-3 week delay for processing negative leave decisions; the priority is currently on getting perfected Applications for Leave to the Court – there remains a challenge with on-site staffing

Chief Justice Crampton:

- Positive leaves – many were held back in 2020 pending discussions with tribunals – at IRB, we are now moving forward with RAD, ID, and IAD; the RPD does not yet have capacity to respond to requests for electronic versions of CTRs; IRCC is now moving forward, except where a visa office or other office is closed; CBSA is also participating in pilot (for Quebec and Pacific region)
- There was a slight drop in IMM filings in 2020 – 42% were refugee in 2020

Mario Bellissimo: can we anticipate delays in service due to pandemic? Will there be 3 hearings a day to address backlog?

Caroline Perrier: we are not expecting 3 per day; plan on normal scheduling (2 per day per judge) – we have been asked to start at 10 a.m. As in the past, we know which counsel are assigned, and avoid creating conflicts for counsel within the Court schedule.

Chief Justice Crampton:

A large portion of the cases in the backlog are RAD cases, so we expect the backlog to clear quickly. We are addressing leave applications remotely, though it remains challenging if there are no bookmarks.

Daniel Latulippe: noted para 11 re electronic service – there are many cases where counsel file a document but without providing an email address – *can we use law society email address?*

Andrew Baumberg: we could consider either the email address on the document or the address at the law society for deemed consent. The Registry has seen many cases where counsel do not provide an address – this creates a challenge for the Sharepoint pilot, and sometimes counsel’s voice-mail is full, resulting in delays.

Chief Justice Crampton: invited bar to make formal request to the Court to rely on the counsel’s email address listed with the law society for the deemed consent to electronic service.

Resources are available on the Court website

- [General Policy Statement re: Virtual Hearings](#)
- [User Guide for Participants](#)
- [User Guide for the Public and Media](#)
- [Practice Tips for Remote Hearings](#)

Also, there is a Webinar under development: “Zoom Hearing Primer for Counsel” – an update will be circulated to the Bar in due course with details.

RAD audio recordings

Justice Norris: the RPD hearing is part of the record before the RAD, so the Court needs to find a way to incorporate the recording into its own records. It might be time to consider developing a Practice Direction to address this situation. There is an expense to the private bar to prepare a transcript.

David Matas: in the past, transcripts were prepared by the IRB if there was a judicial review of a decision of the RPD. Perhaps the RAD should be preparing the transcript. He suggests that this be for the Court – *rather than the Bar* – to address with the RAD.

(iii) E-Filing Portal

Chief Justice: there continue to be bugs, which the Court’s IT group is working to resolve. In the interim, parties can use e-mail, with regional Registry email addresses now listed on the [e-filing portal page](#). CAS interim accreditation of Sharepoint for protected B status is expected by end of January.

Andrew Baumberg noted an update to the portal this past weekend, which addresses some but not all of the external errors – the portal still has technical issues that shall likely be resolved only by February.

3. Motions: stay of deportation

The revised draft Guideline was circulated to the Committee.

Justice Norris: CBSA announced plans to increase deportations, though the number of motions continues to be low. However, there may be increase, either gradual or sudden, so the proposed Guideline will be important.

Justice Strickland: the current draft is essentially in final form – the Committee has had two opportunities to provide comments. This is a chance for wordsmithing.

Justice Norris: deadline of February 1 for final comments, which can be submitted to Andrew Baumberg. The Guideline will then be published.

Daniel Latulippe: at page 2, the Justice duty counsel is on duty until 9 p.m., not 9:30 p.m.; in the next paragraph, the reference to Application for Judicial Review should be Application for Leave and Judicial Review.

4. Motions: stay of release from detention

Justice Norris: the [protocol](#) was published on November 30. Please review and use it. Feedback is welcome on implementation.

Justice Zinn noted the work of members of the sub-Committee leading to the protocol. He will follow-up with the sub-Committee to get any initial feedback.

5. Pilot project – settlement

(i) Amendments / expansion

Justice Norris: we remain committed to rolling out the project on a national basis, but this is not the best time given the pandemic.

(ii) Working Group: Consent judgments

Justice Norris: at the last meeting, there was discussion regarding the scope of disclosure.

Diane Dagenais: in November, we had an informal meeting with members of the Bar. There was a question whether more detail was needed in the Notice itself. The Department circulated the concerns and caselaw with counsel, including the current Notice, and the Department's position is that no changes are required.

Erin Roth: there was discussion of an amendment to notice #3 re grounds for settlement, with a suggestion of an option for supplementary content regarding the grounds for consent. There may therefore be some disagreement.

Chief Justice Crampton: if there is insufficient disclosure, there is a risk that the Court will not agree to grant the motion for consent judgment. It is not clear why the Department is reluctant to disclose the nature of the error so that the Court satisfy itself on this point, and so the Tribunal is in a better position to avoid repeating the error.

Justice Strickland: in a recent case, the Court received the form with a simple check-mark but no explanation. The Court is usually looking for only a few lines to clarify the nature of the error.

Chief Justice Crampton: agrees – often even a single explanatory sentence is sufficient.

David Matas: noted that he sometimes receives a *pro forma* consent, but is not bound to accept it. He could decline, and then might get brief reasons from DOJ counsel, which would be sufficient.

Diane Dagenais: the form as it now stands has sufficient guidance, but in some cases counsel perhaps required further training. Going forward, we are aware of the Court's position and counsel understand the concerns. This should be sufficient to address practice issues.

Justice Norris: regarding the grounds, there may not be much to be gained by re-opening the terms of the consent framework. We may simply encourage counsel to clarify the grounds, given that the Court expects additional detail. We can review the issue if the problem persists.

Diane Dagenais: even without expansion, can some changes be made to the Leave / Production Order templates – in particular, the following two suggestions were previously submitted:

- removal of reference to Court-assisted mediation option
- exclusion of s.87 Canada Evidence Act cases

Andrew Baumberg: offered revise to the draft Leave / Production Order templates for circulation and comment in writing.

Chief Justice Crampton: noted in particular that the Court did agree to carve out the s.87 cases. This should be clarified.

6. **Ghost representatives working group**

Andrew Baumberg:

- i. **Rules amendment** (obligation to disclose name of a person who assists, for a fee, with preparation of the Notice for Leave) – final preparation of this Rules amendment package for publication in Part II Canada Gazette, along with two other separate amendment packages.
- ii. **Draft website text** – under review in sub-Committee re: who is authorized to represent a party / how to verify that a person is a lawyer.
- iii. **The text in negative Tribunal decisions** that is sent to parties advises them of their right to challenge the administrative decision in Federal Court. The templates vary from one tribunal to another, with some leaving the impression that a party can continue to rely on an immigration consultant who assisted them in the administrative process (e.g., the IRB allows immigration consultants to represent a client before the Board). It is preferable to develop standard language to recommend to the wider tribunal community.

Mario Bellissimo: there has been a lot of progress – hope to see links to law society websites that refer to the the Federal Court.

Justice Norris: agrees.

7. **Common list of authorities**

Justice Norris: the latest draft (general list & list for stay motions) was circulated to the Committee. Let us know if there is any oversight – otherwise, we plan to publish it.

8. **Subcommittee for Assistance of Unrepresented Litigants**

Andrew Baumberg: the pro bono counsel project was launched about a year ago, though with fewer cases more recently. It is a paper-based screening process, but the screening form will be coded into the Court website – target launch of the online version is February 2021.

9. **Immigration and Refugee Law Moot <https://ilm-cpdi.ca/>**

Anthony Navaneelan: the moot is on track, scheduled for March 11-12. There are 7 judges confirmed from the Court, along with a large group of counsel. Many thanks to the Court and to Andrea Climo.

Justice Norris: we are tremendously excited about this moot. A great initiative.

10. Records Retention Schedule

Justice Norris: CAS is running out of space at the Pink Road archives.

Andrew Baumberg: we are set to launch the first phase of the Retention Schedule on Monday, January 18, with some 33,230 IMM files from 1995-2000 being slated for a review period (3 months), during which requests can be submitted for copies, then destruction. Requests can also be submitted with a recommendation that a file be preserved in perpetuity.

The Notice will be circulated / posted next week.















































































David Matas: can there be retention of categories of cases of historic significance?

Andrew Baumberg: the Court can consider more general requests for preservation of a defined category of cases of historic significance and then determine how best they can be accommodated.

11. Next Meetings

Notice will go out with a survey for possible dates for the next meeting.

Annex - Attendance

AB Andrew Baumb... (Host, me)  	 Diane Dagenais  	LC Law Clerk - Jan Nitoslawski  
 Chief Justice ... (Co-host)  	DK Don Karl Roberto  	LC Leah Cummings  
JN John Norris (Co-host)  	E Erin  	MB Maria Bellissimo  
A AJB  	FK Fatiha ... Ask to Unmute More >	MD Marie Desrosiers  
AN Anthony Navaneelan - CARL  	HA Hillary Adams  	MS Martine St-Louis  
BS Banafsheh Sokhansanj  	JM Jack Martin  	MS Maureen Silcoff  
CL Cara Locke  	JC Jasmine Chung  	MJ Me Jouman El-Asmar  
CP Caroline Perrier  	JC Justice Cecily Strickland  	MS michael switzer  
CP Chantal Proulx  	JH Justice Henry Brown  	MS Michel shore  
CJ Charis Jung  	 Justice McDonald  	PO patrick oneil  
DL Daniel Latulippe  	JR Justice Russel Zinn  	P preevanda  
DM David Matas  	JD Justine Drouin  	WL Wennie Lee  
DD Deborah Drukarsh  	LC Law clerk - Fatima Husnain  	 613****662 