



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

June 7, 2021

MINUTES

1. Agenda / minutes [January 14]

Approved.

2. Court Update

Chief Justice Crampton presented a PPT deck, as also presented to the CBA conference on May 28.

Justice Norris: in addition, regarding the [Summer Recess](#), the Federal Court will have a reduced schedule for both general and special sittings from July 26 to August 8, 2021.

3. Modernisation & E-Process

Andrew Baumberg: some e-process practices are implemented by Practice Direction, and additional changes are likely under a longer-term project to implement a new case management system, which may require formal changes to Rules.

Record of the RPD / RAD

Justice Norris: we are constrained by what the IRB provides from the record. We could strike a working group to look into this, but if not pressing, it could be addressed on a case by case basis. There have been cases with no transcript.

David Matas: it is not the transcript but something else; the RAD gets a paginated record from the RPD, and the RAD refers to this. At leave stage, though, it is not disclosed, so we do not have the page numbering. This would be helpful to have at the leave stage.

Justice Norris: who is best placed to advocate with the IRB?

Mario Bellissimo: some matters go from the FC to the IRB and then back to FC, but there are discrepancies in the record. The Court should strike a sub-Committee, with an IRB representative present, to resolve such issues. They have different practices depending on the grounds for FC intervention. It would be useful both at the leave and the JR stage.

Justice Norris endorsed this proposal, including to contact IRB.

Action: advise Andrew Baumberg if you are interested in joining this new working group related to the record of the RPD / RAD.

Pilot: Online Access to Documents

Justice Norris: as we shift toward digital litigation, we are exploring a pilot for online access. Although we are steering clear of sensitive types of IMM proceedings, we are moving forward incrementally and cannot entirely ignore the IMM practice area. Some economic visa case types could possibly be included in a pilot. An initial focus would be on parties' pleadings – although not revolutionary, we want to hear from bar regarding areas that need attention, and guidelines for drafting memoranda. It is proposed to strike a working group to look at this more closely.

Chief Justice Crampton noted the competing perspectives, including the Media Lawyers' Association's argument in favour of broad public access. There needs to be a way to move forward with a phased approach to address the issues raised from both perspectives.

Mario Bellissimo: noted the dual-track use of AI to collate all submissions that are online and then produce digital ghost representation for leave application. Whatever way we go forward, we need to

consider the front-end – need an ability to review files by self-represented litigants to assess the type of representation. However, there is risk of groups gaming the system based on easily-accessible records. Justice Norris: we need to consider this with an open mind. Perhaps we can develop a new model for the record similar to non-IMM proceedings.

Action: advise Andrew Baumberg if you wish to join this new working group regarding online access to the Court record.

Andrew Brouwer volunteered.

The Chief Justice noted that with an increased shift to anonymity requests, we should also consider best practices for case naming conventions to facilitate citation / tracking of jurisprudence.

4. Consolidated Practice Guidelines

Justice Norris: we have been working to consolidate existing practice directions to rationalize the field. We have consolidated IMM PDs, including some very new Protocols. These were the product of considerable work – we are not proposing to re-visit the substance. Not expecting feedback right away, but please provide feedback by August 9. We will then re-work and present final version at next meeting.

Action: provide feedback, if any, regarding the draft Consolidated Practice Guidelines by August 9 for discussion at the next meeting.

Daniel Latulippe: regarding the settlement pilot – it was noted that the draft Consolidated Practice Guidelines propose to expand the pilot nationally on September 30. This is acceptable to the Department.

Andrew Baumberg also noted the proposed inclusion of a paragraph 5 in the Production Order template. This was circulated for comment:

Para 5 If the Minister intends to apply for the non-disclosure of information or other evidence contained in the certified tribunal record pursuant to s 87 of the Immigration and Refugee Protection Act, SC 2001, c 27, or determines that s 37 or s 38 of the Canada Evidence Act may apply, then the Minister will advise the Court, the other parties and the Tribunal without delay. The Tribunal's obligation to provide a certified copy of its record is then vacated. The application will no longer proceed as part of the settlement project, and a case management judge will be assigned by the Office of the Chief Justice.

There were no comments regarding this proposed addition to the production Order.

Anthony Navaneelan: there are many delays following the production Order. Deportation steps sometimes are taken by the government, given lack of definitive language granting leave.

Chief Justice Crampton: the statute indicates that once leave is formally granted, there is a 90-day time-period to schedule the hearing, so the Court is reluctant to state this directly on the record. Following issuance of a production order, some judges want to maintain discretion regarding the decision to grant leave. However, he is not aware of a single case in which leave was *not* granted following issuance of a production Order.

Anthony Navaneelan: it would be helpful to have this in the minutes to then be submitted to respond to a possible removal.

Postscript: It was subsequently determined that there has been one case in which a judge who issued a production Order subsequently did not grant leave. This is generally viewed as having been an exceptional case.

5. Ghost representatives working group

Justice Norris referred to the draft web page text that was circulated to the Committee along with the agenda, indicating who may represent a litigant in FC.

There were no comments.

Justice Norris: one issue relates to lack of clarity in the message from the Tribunal via its decision template, which might lead some claimants to think that the same IMM consultant who represented them before the Tribunal could also represent them in Federal Court. We are considering possible liaison with tribunals to consider best practices for the wording regarding the right to judicial review.

6. Common list of authorities

Justice Norris: the updated lists prepared by the working group were posted on the FC website recently:
Volume 1: Immigration and Refugee Law

[Immigration and Refugee Law](#)
[Deferrals and Stays of Removal](#)

7. Subcommittee for Assistance of Unrepresented Litigants

Justice Norris noted that Michael Battista had circulated a short note to the Committee providing an update regarding the activities of the Federal Court Legal Assistance Program. This volunteer-run program began at the end of 2019 with the goal of assisting unrepresented litigants before the Court in immigration and refugee matters. The volume of applicants to the program has not been high, which could be a result of the closure of physical Court offices during the pandemic. Nevertheless, we will shortly have a presence on the Court's website and expect to see an increase in numbers once that occurs. Andrew Baumberg: the application form for the Pro Bono program has been converted into a web application for the FC website, but requires some final review and correction of a few issues; this has been delayed due to other projects – we are trying to get it finalized shortly

8. Immigration and Refugee Law Moot

Anthony Navaneelan: Justice Diner raised the idea with this group, and a working group came together and successfully launched its first moot. UBC was the top faculty, and the top team was from University of Montreal. This was a very strong bilingual moot. Thanks to Chief Justice and other judges. For next year, 8 law schools signalled an intention to join, and others are expected based on expressions of interest this last year. Information will be circulated soon.

Justice Norris thanked Anthony and the team for their work.

See bilingual website: <https://ilm-cpdi.ca/>

9. Suggestions for Long-Term Committee Plan

Justice Norris: the Committee has brought many projects to conclusion. Invitations are welcome for the longer-term agenda.

The Chief Justice asked for an expression of interest in continued virtual hearings – in the video chat, numerous participants responded that they like virtual hearings, while others indicate that they would like to get back into the hearing room (e.g., “I love online hearings.” “There is something missing in online and virtual hearings. They simply cannot replace in-person interactions no matter how efficient they are.” “I would really like to physically go back to the Court when we can, but do like having the online option too.” “yes, agreed. having the option is important.” “I agree - i see the merit of an option of remote depending on the case - but personally i cannot wait to be back in person in court.”) He also asked for feedback regarding the COVID-19 practice direction, and any items that are missing or need to change. Re timing for an update: things continue to evolve rapidly, and we are hoping things will settle down somewhat before re-issuing the practice direction. Some things need to change – e.g., email vs e-filing portal.

10. Next Meeting

Monday, September 13 at 11 a.m. Eastern.