

**BENCH & BAR LIAISON COMMITTEE (CITIZENSHIP, IMMIGRATION & REFUGEE LAW)****Thursday, June 11, 2020 via Zoom Meeting****MINUTES****1. Agenda / Minutes [May 8]**

- Approved

**2. COVID-19 Pandemic Update: COVID-19 Amended Practice Direction and Order: Update #3 (June 11) [Chief Justice Crampton]**

- Announced key highlights from newest COVID-19 Update:
  - The Court will be lifting the suspension period in Western and Atlantic Canada [8 provinces total] on June 15, 2020. Following this, a 14-day grace period will apply to all suspended timelines. In addition, hearings will not be rescheduled [except under the exceptions outlined in COVID-10 Update #2] until July 13, 2020. The default for all judicial reviews will be videoconference [V/C] hearings, although parties may request an in-person or teleconference hearing.
  - Quebec, Ontario, and the Northern territories will continue the suspension period until June 29, 2020. This accords with provincial reopening strategies and feedback from stakeholders.
  - CJ asks for feedback on whether the suspension period should be lifted in ON, QC, and the Northern territories on June 29, 2020, keeping in mind that the 14-day grace period for taking procedural steps would run until July 13, 2020, and the Court would not schedule hearings to occur until July 27, 2020 – unless the matter is proceeding pursuant to one of the five exceptions that have been in place since April 29, 2020.
- Relevant Comments/Questions:
  - Mario Bellissimo: Can you request V/C or teleconference after suspension is lifted?
    - CJ: V/C is the new default, so there is no need to request it.
  - Mario Bellissimo: If V/C is the de facto mode and there is already a 2-week lag, then the Bar's concerns are addressed because parties don't have to be physically present. So, is there a material difference between a uniform reopening and a 2-week phased reopening to avoid other potential issues?
    - CJ: The Court needs to be respectful of provincial health measures. The horse has left the barn on the staggered approach now that the Court's June 11 direction is out. Both provinces are returning across sectors, including the courts, however, so we will be hard-pressed not to follow suit now.
  - Mario Bellissimo: Given this staggered re-opening, is the Court concerned with backlogs and applicants filing in different jurisdictions in order to have their hearings scheduled?

- CJ: The Court is aware of and struggled with this. However, the Court needs to be alive and sensitive to the differing realities across the country.
- Robert Israel Blanshay: Preference that Toronto open as soon as possible, and that July 27, 2020 as earliest date for in-person hearings is a bit late.
  - CJ: Many of these delay concerns will be addressed by hearings moving forward by V/C. Note that in-person hearings will be scheduled as soon as possible after the Court reopens. Also, parties are always able to move forward more quickly on a voluntary basis, pursuant to one of the existing exceptions to the Suspension Period.
- Andrew Brouwer: Recommends maintaining a flexible approach to extension of time motions and adjournment requests due to COVID-related barriers [for example, to putting together records, meeting with clients, etc.]. Notes that many clients are eager to get back to it.
  - Justice Diner: Responses will be subject to judicial discretion, but the Court has been sensitive and flexible thus far.
- Banafsheh Sokhansanh: Is there a sense of timelines for completion of retrofitting the Western province facilities should parties elect for an in-person hearing?
  - CJ: We have been informed that they should be ready. However, given that delays with renovations/modifications of Court facilities are not unusual, the updated Practice Direction includes a proviso for this, as well as for changes in local health and staffing conditions.
- Deborah Drukarsh: Does the Court intend to canvass counsel availability in advance of setting down hearing dates?
  - Caroline Perrier: So far, the Court has been contacting all parties whose matters were adjourned prior to rescheduling. They will also be asked if they have/need electronic documents. However, for new matters [incl. general sittings] the Registry will not ask for availability or consent, and will simply schedule within the usual 90-day period.
- Arghavan Gerami: Supports reopening the Courts as soon as feasible given that V/C will now be the norm. Confirms that work with clients is being done remotely, and does not need to meet with clients in person.
- Stéphanie Valois: While the IRB is still closed, they have indicated they will soon start sending decisions via fax. Therefore, is it still possible to file the ALJR electronically on the DOJ via the FC?
  - CJ: The Court will maintain the structure set out in the April 4 Practice Direction & Order, including how to file electronically. Per Point 9, parties are encouraged to move forward electronically where possible.
- **Action: CJ requests that the Bar continue to provide feedback to the Court. The Court values this feedback and the ongoing relationship sustained through this Committee.**

### 3. Updates on Committee Work

- Common List of Authorities [Amanda Bergmann]
  - Feedback received from RLO and DOJ - thank you.
  - Intend to publish an alphabetized list. All other suggestions are being considered.
  - **Action: further feedback welcome, send to [Amanda.Bergmann@cas-satj.gc.ca](mailto:Amanda.Bergmann@cas-satj.gc.ca) asap.**
- Immigration Detention Working Group [Justice Zinn]
  - Still working on the Protocol, intend to have something for the entire committee to look at soon.
- Stay of Deportation Guidelines [Justice Strickland]
  - The draft is currently being reviewed by the Court.
- Immigration Moot [Matthew Chan]
  - Moving forward. Last week a letter was sent to law school deans/professors inviting them to participate. UoT and Windsor have confirmed; several other schools have expressed interest, subject to questions of cost and language.
  - **Action: Justice Diner will clarify with interested parties that the moot will be bilingual and that there are no participation fees.**
- Pro Bono Pilot Project [Michael Battista]
  - Expanding the pilot project to Vancouver, Calgary, Ottawa, and Montreal. Have already secured volunteer regional coordinators; are now coordinating with local registry staff.
  - Justice Fuhrer assisting.

#### 4. **Feedback on Virtual Hearings [Justices Pentney and Mosley]**

- Introductory remarks by Justice Pentney:
  - The Court has been working hard to get up to speed and has held numerous hearings over V/C and teleconference. Approximately 300 virtual hearings have already been held, and a further 143 hearings are now scheduled moving forward, including immigration hearings. Feedback overall has been positive, and have noted it is very efficient both for hearings and for sharing documents.
  - While there have been technical glitches and growing pains, overall many of the concerns expressed during the consultations have not come to fruition. For example, no hearings have been “Zoom-Bombed” thanks to the security measures taken by the Court. Many of the remaining issues relate to technical hosting or party connectivity.
  - Despite initial concerns about confidentiality, relatively few hearings have involved external observers and/or media. So, while in theory Zoom hearings are more widely accessible and available to the public, in reality this hasn’t been the experience. The Court is prepared to, but hasn’t had to, use the ‘Webinar’ feature in Zoom to manage participants.

- In addition to JRs, both complex trials and mediations are proceedings over Zoom. Zoom has proven to be effective in this format, in part due to features such as ‘breakout rooms’. Using Zoom has also reduced party costs and saved travel time.
- Overall, while the Court will continue to look to new platforms [including MS Teams], there is no intention at this time to use any platform other than Zoom. It has all the capabilities requires for proceedings to continue and has other distinct advantages [e.g. MS Teams has a connectivity issue].
- Introductory remarks by Justice Mosley
  - The Court has conducted a lot of research on concerns re: Zoom’s privacy and security features, alone and in comparison to other platforms. Based on this research, Zoom remains the easiest and most convenient platform to use.
  - The Court will continue to look into document exchange options, and recognizes that cloud computing/file sharing will be required at some point in the near/foreseeable future. The Court will continue to follow the Judicial Council’s 2019 Recommendations when assessing platforms. The Court has not settled on a platform yet, and is continuing to consider relevant variables [e.g. where the data will be hosted].
- **Action: An informal survey on participant experiences with Zoom hearings will be distributed through the various liaison committees in the upcoming weeks**
- Discussion
  - David Matas: Would it be possible to video record Zoom hearings and make them available to parties after the hearing for distribution to clients?
    - Justice Mosley: Technically possible, yes. However, there are a number of issues that need to be resolved before this becomes an option. For example, what are the parameters of how the video can be used? Will all parties need to consent? etc.
    - Justice Pentney: The Federal Court Policy on video recording still applies. We expect that applicants who wish to participate in a JR will do so live as a Zoom participant. The Court is potentially open to recording Zoom hearings based on a specific request, and subject to a specific Order of the Court, but as of right now video recording is not the normal course of action.
  - Deborah Drukarsh: Several counsel from the ORO Immigration Division have said their experiences with Zoom hearings were excellent. However, DOJ has two points of feedback:
    - Counsel were receiving requests the day before/within an hour of the hearing for SIP numbers [i.e. an alternative way to contact DOJ counsel who are located in a boardroom] to allow for different ways to connect to the hearing. DOJ requests that these requests be made further in advance.
    - Counsel also received late requests for materials from the Court. The parties had initially presumed the Court had everything accessible in advance. DOJ understand things may arise unexpectedly but requests that these requests be made further in advance.
  - Justice Shore: What is being done with respect of identifying cases ripe for mediation?
    - Deborah Drukarsh: DOJ is open to mediation.

- Tony Navaneelan: CARL echoes the concerns raised by the RLO with respect of confidentiality and the expansion of the open-court policy ushered in by technology. He notes that RLO provided some suggestions on how to mitigate these risks, including Judges issuing instructions on how information can be used and reminding applicants that they do not need to appear on video, and RO's providing lists of those who are watching. He hopes that there will be an ongoing opportunity to revisit how the Courts are running Zoom hearings so that concerns can continue to be flagged.
  - Justice Mosley: Why is a blanket policy necessary if parties can bring these concerns to the Court's attention in advance of the hearing?
  - Tony Navaneelan: The general concern is that Zoom hearings offer more of an opportunity for people to watch the hearings than physical Courts do. Counsel can never be quite sure of who is in the room [e.g. names can be changed, people can be out of frame, etc.] or whether attendees have an ulterior motive.
  - Justice Mosley: You can see who is on the call – is this not sufficient?
  - Justice Strickland: Generally the Judges won't see the Applicant anyways, so there is little risk of exposure from a visual aspect.
  - Justice Mosley: We also know who is in attendance, so there are no anonymity concerns.
  - Tony Navaneelan: Does the RO verify the identifies of those attending?
  - Justice Mosley: Yes, the RO can do this. So far, no one has been attending aside from the parties, ROs, Judges, and law clerks.
  - Chantal Desloges: There is concern that someone will provide a fake name.
  - Justice Pentney: You can see everyone who is on the call. We recognize that individuals may enter a fake name or address. However, if there are concerns about who is actually participating, the Court can take further steps to verify. Some Courts require a lot of personal information in order for third parties to participate. Our perspective is that these concerns can be dealt with on a case-by-case basis rather than by a blanket policy. However, we remain open to discussion and feedback.
  - Andrew Brouwer: The Court must recognize and be prepared to make a ruling on Counsel objecting to someone joining / being on the call.
  - Justice Mosley: The RO acts as the host and controls admission. In the case of someone seeking to join, the RO would contact the presiding judge and ask if they can be admitted. While the specific protocol is subject to judicial discretion, Justice Mosley would pause the argument and ask Counsel if they know who is seeking to join the call and ask if they have any concerns. He reiterates that the Court controls its processes and will protect the hearings.
  - Justice Pentney: The Court also has a 48-hour notice requirement for third party observers. The links distributed by the Registry are also restricted [i.e. only one log-in per link] and the hearings are locked [i.e. no one else can join] once all necessary parties are present. The Court also maintains a record of who is participating. At this time there is no perceived need for a new blanket order because the previous policies can simply be transposed onto the virtual world. He

feels that if someone is blatantly disregarding the rules, the Court has the tools to address this.

- David Matas: Recommends looking to the Winnipeg experience re: document exchange platforms. He also notes that Zoom is helpful for screen sharing / power points.
  - **Action: Justice Diner confirms that the Court is still looking into OneDrive re: file sharing, and is certainly considering this and other lessons learned.**
- Robert Israel Blanshay: Have also received feedback from counsel concerning late requests that are difficult for them to manage. He acknowledges this is part of the learning curve but asks the Court to refrain from late requests as much as possible. He also asks the Court to be cognizant that opposing counsel cannot liaise in person together anymore, which creates issues. However, he emphasizes that the CBA recognizes there are limited [if any] other options; and that privacy and security issues must remain at the forefront of any conversation. He points to Australia as an example in this respect [e.g. for dividing confidential and non-confidential information]. He notes that Judges may also not receive the same level of help from the RO as they are accustomed to.
  - Justice Mosley: With three screens, he can find information more quickly than he could with a physical file. He notes that in some US states it is an ethical requirement for lawyers and judges to be technologically savvy, and advocates for this same requirement for Canadian judges.
  - Robert Israel Blanshay: Counsel would also appreciate feedback from judges so they know what is working.
  - Justice Mosley: Please bookmark PDFs.
  - Justice Zinn: Agrees that electronic copies are the “way to go” for document-heavy trials. He notes that he hasn’t found immigration Zoom hearings much different than in-person hearings and doesn’t believe anyone is disadvantaged. He echoes the comment re: bookmarking PDFs.
  - Justice Fuhrer: Echoes the comments re: bookmarking PDFs. She notes that working with PDF documents is efficient and useful, and that V/C hearings are efficient and seem to be working well.
- Jack Martin: If an applicant wants an in-person hearing due to lack of technical skills or equipment, but the respondent wants V/C because of health concerns, what happens?
  - Answer: The Court will be sensitive to parties not being comfortable with technology.
- Daniel Latulippe: Describes an experience where a V/C date was set, but there was no provision made with respect of further facta that were originally due during the suspension period. He notes that counsel suggested dates to the Court, and the Court issued a Direction as requested.
- General question about how scheduling will occur.
  - Justine Drouin: The Court is scheduling within short periods of time right now so is communicating more with counsel. Moving forward, the Court will be more open to accepting scheduling preferences.

- Claudia Molina: Once an applicant files a supplemental memoranda, supplemental affidavit, and a table of authorities, when can the applicant expect an answer from the DOJ to schedule a hearing?

**Next meeting will be in September – happy summer!**