Federal Court Cour fédérale

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

MINUTES

OCTOBER 24, 2023

Attendance:

for the Court: Justice Norris (Chair), Chief Justice Crampton, Justice St-Louis, Justice Strickland, Justice Brown, Justice Go, Associate Judge Cotter

for CAS: Martin Béliveau, Danielle Parent, Klara Trudeau, Caroline Perrier

for the Bar: Mario Bellissimo, Robert Blanshaya, Raoul Boulakia, Anabel Busbridge, Nathalie Chaar, Douglas Cannon, Chantal Desloges, Stephen Fogarthy, Patricia Gamliel, Arghavan Gerami, Chelsea Jaques, Wennie Lee, Jack Martin, Claudia Molina, Véronique Morissette, Anthony Navaneelan, Samuel Plett, Cheryl Robinson, Erin Roth, Maureen Silcoff, Chris Veeman, Richard Wazana, Julie Devillers

for DOJ: Geneviève Bourbonnais, Deborah Drukarsh, Dupé Oluyomi-Obasi

***Regrets*:** Justice Zinn, Justice McDonald, Justice Sadrehashemi, Nastaran Roushan, Andrew Brouwer, Alyssa Manning, Amanda Lord, Perla Abou-Jaoudé, Michael Battista, Vincent , Bjorn Harsanyi Desbiens, Jouman El-Asmar, David Matas, Preevandra Sapru, Stéphanie Valois, Lorne Waldman, Nicholas Woodward

1. Approving agenda and minutes of the meeting held on June 2, 2023

Justice Norris indicated that the items on the *Official Languages Act* and online access to Court records will be addressed by the CJ and not discussed separately. Minutes and agenda were approved.

2. Changes to the Committee

Justice Norris welcomed Associate Judge Cotter to the committee and indicated that Daniel Latulippe was replaced by Geneviève Bourbonnais and acknowledged the valuable contribution of Me Latulipe.

3. Chief Justice's update

CJ Crampton went over the various subjects covered in his presentation, which will be distributed after this meeting.

IMM Caseload –The Court is at above capacity, workload is up 30% from 2022 but 212% compared to pre-covid (2019). The principal growth is in non-refugee and stays are also significantly higher compared to last year. We are currently not able to schedule within 90 days and have a backlog of nearly 400 files awaiting a hearing date.

In person hearings are now accounting for a little under 30% of all hearings (compared to 6% in 2022) and it is still below what what the Court would like to attain.

CJ Crampton noted the recent appointments of Justice Azmudeh from the immigration and refugee area as well as Justices Ngo and Turley. He noted that the Court now has more full time female members than male members.

Erin Roth inquired on the settlements and her impression that they are more frequent before leave. CJ Crampton reviewed the statistics and noticed a decrease. Klara Trudeau confirmed that the settlement number are only for post-leave matters.

Updating the COVID-19 Practice Direction into the Consolidated General Practice Guidelines – In addition to updating the Consolidated General Practice Guidelines, we will be streamlining the provisions regarding the presumptive modes of hearing. The option to request an alternative mode will remain. CJ Crampton indicated that the committee members' feedback will be sought in regards to the use of electronic records for in-person hearings, deemed consent to electronic service, service of originating documents to the Crown in immigration, refugee, and citizenship matters, and provisions regarding gowning and decorum.

Raoul Boulakia wondered why the Court does not prefer having virtual hearings. CJ Crampton provided an explanation and reminded the members of the itinerant nature of the Court and necessity of having a regional presence. The Court also observed better advocacy from counsel when the hearing takes place in person. Justice Norris agreed and explained that even if matters are efficiently conducted virtually, as it sometimes makes the most sense to do, the quality of advocacy has improved with the return to in-person hearings.

Stephen Fogarty asked in the chat about security screening and if the Court would consider exempting members of the bar. CJ Crampton indicated that we do not have the volume to simplify the screening. Justice Norris provided his perspective from when in practice and noted that members of the Bar entering Ontario courts could bypass security screening. Another constraint on changing current security screening practices is that court facilities are shared and CAS is not only serving the Federal Court.

Amendments to the OLA – The amendment of subsection 20(1) will require simultaneous issuance in both official languages of any decision that has precedential value. As immigration and refugee decisions tend to be short, we are hoping the delay will not be significant. We are however facing resources issues in translators. CJ Crampton asked the members to understand the situation and advocate for a service standard of 2 weeks, which at the moment has proven to be difficult to meet. The translators are currently contemplating the use of AI to shorten the process.

Robert Blanshay inquired if interlocutory decisions, more specifically stays were included in this amendment. CJ Crampton confirmed that this change is only for final decisions. Robert Blanshay also asked CJ Crampton to confirm that the service standards will be 2 weeks. CAS indicated that 5 weeks was the expected turnaround. All agreed that this is not acceptable.

Raoul Boulakia asked about the Court's flexibility with the concept of precedential value. Would only files with a certified question be considered as having precedential value? CJ Crampton agreed that this question needs to be examined. He will be consulting with members of the Court and the committee on how precedential value should be understood.

Julie Devillers raised that with the use of AI, translation should not be an issue. CJ Crampton confirmed that the wish of the Court is to have decisions translated within 2 weeks but CAS is facing budget issues.

Chambers of the Court – Further to the success of the first pilot project of chambers, we are adding a chamber for Aboriginal law area. Although the bar requrested that we create an immigration chamber, the volume in this area is too great and we need the whole Court to handle the workload.

Online access to court records – We would like to see this to proceed for the immigration area but only for certain documents (CTR would be excluded). We want to continue the discussion to ensure both sides agree to the boundaries. Consultations are currently taking place to add non-refugee files to the project.

Geneviève Bourbonnais asked if the Court expected that AI or scraping could be used to collect the information appearing online. CJ Crampton indicated that we can't prevent this as the technology changes very rapidly and we have no mean of confirming that AI was used.

Raoul Boulakia shared his concern that personal information be present in memoranda and the risk of having these documents accessible online.

Justice Norris indicated that the liaison committee working group has been somewhat dormant but that it is going to be revived. The Court's intent is to consult all stakeholders.

Draft AI guidance – Alberta and Québec recently issued notices to the public and the profession in line with the CJC notice. The Federal Court wants to go further by expanding the treatment of risks and benefits, by recognizing that counsel and administrative bodies whose decisions may be challenged may increasingly rely on (or be impacted by) AI and by encouraging the promotion of alternatives to AI for parties who may nor have equal access to AI and similar technologies. The CJ welcomed feedback from the Bar and assured the members that AI will not be used to make decisions but we are exploring innovations to improve our internal systems such as automation to improve services and efficiency in the Registry.

Mispronunciation of names – Further to the letter sent by the CBA in March 2023, it was suggested that the Registry Officers verify the pronunciation prior to the hearing and if in doubt, the presiding judge should request all counsel and parties to confirm the pronunciation.

4. Stay motions and failures to follow the protocol

Justice Norris conveyed the message to the Bar of the importance of respecting the protocol, especially with the filing of large records. The Court understands that in some instances exceeting the limit is justified but also noticed a number of irrelevant documents being included. The convenience of filing electronically may also be a factor contributing to unnecessarily voluminous records.

5. Allegations against former authorized representative protocol

The draft was in fact not finalized and with the contribution of Raoul Boulakia, the amendment will be published shortly.

6. Varia

CJ Crampton confirmed that the change to the presumptive mode of hearing will take effect on February 1, 2024.

7. Next Meeting

The next meeting will take place early in the new year.