Federal Court
Indigenous Bar Association ~ Aboriginal Law Bar Liaison Committee
June 19, 2019 (Banff, Alberta)

MINUTES

Attendance: Justice Roger Lafrenière (Chair), Justice Douglas Campbell, Justice Cecily Strickland, Prothonotary Kathleen Ring; Kate Gower; Paul Shenher & Sheldon Massie (DOJ), Robert Janes (CBA), Gaylene Schellenberg (CBA staff lawyer); CBA/Section members attending in personal capacity: Ryan Lake (BC), Pamela Large-Moran (PE), Brittany Scott (NT), Jared Wheeler (MB).

By phone: Chief Justice Paul Crampton, Justice Michel Shore, Justice Grammond, Justice Paul Favel, Paul Seaman (IBA); Andrew Baumberg, Jaro Mazzola, Andhra Azevedo, Caleigh Gruner, Amy Tang.

Regrets: Prothonotary Milczynski, Scott Robertson (IBA).

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Chief Justice Paul Crampton provided a Court update:

- Judicial appointments – ACJ Gagné, Justices Pamel and McHaffie; Prothonotaries Molgat and Furlanetto; Justice Harrington recently retired, and Justice Mandamin will retire in August;
- Prothonotaries – In Montreal and Vancouver, the prothonotaries will now get a writing week each month, with a visiting prothonotary to replace them for the week; this will give rise to an increased need to ensure greater consistency across the country;
- Vacancies – 1 Ontario and 2 Quebec vacancies are the result of judges taking on supernumerary status or being appointed to the Federal Court of Appeal ; also 1 position for a judge and 1 position for a prothonotary were created by budget 2018, and 3 new positions were created in budget 2019; looking for applications from leading members of Bar;
- Budget 2019 – the Court made funding requests for a new Montreal building, translation, and a new case management system, which is critical to shift to a digital Court; only the first request was fully funded, with some limited funding for translation; a new pilot was recently launched to begin translating summaries of some decision into an indigenous language;
- Scheduling – For hearings lasting 1-3 days, the Court is scheduling for the Fall of this year, but still has some availability in July. For hearings lasting 4 days or more, the Court is offering dates in Fall 2019. For hearings lasting 10 or more days, the Court is scheduling in Winter 2020, or Fall 2020 for IP cases (due to priority for assignment to an IP judge);
- New website launch – there are many new resources, but suggestions welcome;
- Rules Committee – 3 positions for members of the bar were vacant since 2016, but filled by the Minister late Spring; some delay in Committee's work, but work is ongoing behind the scenes on projects such as proportionality, costs, enforcement, and limited scope appearances; there is also a pilot project to allow parties in Quebec to use the civil procedure rules of Quebec;
- Strategic plan – a public consultation is to be launched soon; two tentatively identified themes are:
  - (i) access to justice, with a focus on modernization (shift to electronic processes), reduction in cost of litigation, and improving resources for litigants; and
  - (ii) strengthening the court as a national institution, including better visibility, improved budget mechanisms, better access to the Court's under-utilized class action jurisdiction, and improved translation timing;

Justice Lafrenière: the Court regularly holds meetings that engage the question of how to improve Court processes. At a recent meeting, the proposal to issue some summaries in indigenous language was raised, and has immediately been launched as a pilot project. The Court has also identified a core group of judges who have greater specialization to hear Aboriginal law cases; all prothonotaries are automatically included in this group. For chronic disputes, there is an effort to assign members of the Court who have previous involvement in legal proceedings between the same parties. This is more efficient.

There is significant interest within the Court in the work of this Committee, and in particular with getting input from the Bar regarding the Committee's direction.

Paul Seaman noted that Scott Robertson was called away on an urgent matter for a client; as a new representative for the IBA, he prefers to be listening at this meeting rather than take a leading role.

Justice Lafrenière noted the limited response from some quarters on various initiatives. Members of the Committee should consider whether it is necessary to hold two meetings per year, or whether only annual meetings are sufficient. For further discussion.

Paul Seaman asked about the protocol being followed for selection of a case to have a summary in an indigenous language.

CJ Crampton: parties could suggest to the judge that a given case is a good candidate, and the presiding judge could make a similar decision.

Justice Grammond: for the first case in which this was done, it was his decision, as presiding judge, to issue a summary in an indigenous language. It would be useful to allow parties to make a request, without precluding the judge from making a decision on his/her own initiative. Regarding choice of language, this was a matter based on the indications in the record itself regarding the Indigenous language of the parties, though input from the parties would be helpful. This remains a pilot, to explore criteria for selection of cases and other issues, including archive options, and to get feedback from parties.

Justice Lafrenière: this translation process is funded from the existing Court translation budget. It is an important initiative, and the recent government bill regarding indigenous languages was noted. If you know of cases that might be appropriate candidates for this pilot, please advise the Court.

Sheldon Massie asked for information regarding the Translation Bureau.

Andrew Baumberg: the Courts Administration Service has a contract with the Translation Bureau to provide official translation services, and they also have a roster of Indigenous language translators.

Robert Janes suggested an audio recording be made accessible.

Andrew Baumberg: this was done. [See: https://www.fct-cf.gc.ca/en/pages/media/webcast#cont]

Pamela Large-Moran suggested that a recent decision of Justice Favel be translated to Mi'kmaq.

Justice Favel: this decision was requested by the parties on an expedited basis, but a translation could be considered.

Sheldon Massie recommended that the Court raise the budget issue with Judicial Affairs.

Andrew Baumberg: this has been done.

1. Review Agenda

No comments.

2. Adoption of Minutes of November 1, 2018

Sheldon Massie moved for approval; Robert Janes seconded. All agree.

3. How To Make More Space for Indigenous Legal Traditions

Discussion: how to move forward?

Justice Lafrenière: this is probably the most critical item on the agenda. Members of the Committee were invited to review the minutes of presentations by previous speakers on the issue. The Court is looking to members of the Bar to recommend how to move forward.

Robert Janes noted that the IBA's position is probably most important to hear.

Paul Seaman: law schools in Canada are now teaching indigenous legal traditions. It raises the question about how and where these issues will be raised, whether in Federal Court or elsewhere. The Court has experience in custom elections, but probably less in other areas.

Robert Janes: at the committee level, we have done as much as possible in the abstract. Inevitably, there are issues re oral history (work under way within a sub-Committee), and indigenous languages are important (this is a positive step). There is a need for judicial education – reference was made to an Ontario trial judge's negative reaction to indigenous law, overturned on appeal. The problem is that academic and legal thinking is quite divided on the role of courts. Some say this should never be raised in Court, while others think it is inevitable. Rules are needed to ensure that the basic elements are not re-invented each case, but the path forward is not clear. In many cases, judges are not clear on how to receive indigenous law. The best we can do is to create the structures to receive this law.

Justice Favel agreed with Mr. Janes. There are divergent views about bringing indigenous law into court. There are different levels of indigenous law (for example, ceremonial matters, with protocols) that are not likely to be raised in Federal Court. We are seeing an intersection between western legal concepts (e.g., election code) and indigenous custom. There is debate on how to apply the indigenous custom. A recent decision by Justice Zinn [*Jim Shot Both Sides v. Canada*, 2019 FC 789] makes reference to the oral tradition – this is a good example. Upon review of the remarks of recent speakers, there are many helpful ideas for integrating indigenous law (e.g., Judge Thorne re family / contract / criminal law disputes), but it may be more challenging for matters coming before the Federal Court. It was Prof. Young's view that it is the job of lawyers to bring these matters to court. However, communities are not likely fully aware that a specific custom is being brought to the court – there is sometimes a dispute within the community itself. It may be preferable to have the hearing in the community to allow it to be directly involved and to hear what the lawyers are presenting as the community's custom. Maybe the new program in Victoria will be a source of new ideas. The court should not be prescriptive. This committee remains helpful to suggest possible approaches and, ideally, narrow the issues where we may have some traction to move forward.

Justice Shore: it is important to recognize that the Chief Justice has invited as much input as possible from the Bar on how the Court should move forward. What tangible aspects can we get? Something must be done that can be accepted in a climate of confidence. How do we bring in Indigenous Elders earlier in the proceeding, to move more to healing circles and mediation that is more healing, rather than formal adjudication? Healing plans and cultural protection are important. How to make space for indigenous practices? Elder support is needed and a relational way of providing services to provide a safe justice process: a more regional way of providing services. The medicine wheel and four directions from indigenous teachings. The process values are based on respect, courage, honesty, truth, humility, wisdom, and acceptance. The question is how to bring in an Elder who can hold the space. To listen well

so that we can speak well. Active listening is important. The stories are not simply anecdotes, but a narrative that provides an encyclopedia of reference, a dictionary of terms, and a gallery of portraits. Balance of spirit, emotion, mind and body: this is wellness from an indigenous perspective. Central to wellness are language, land, beings of creation, and ancestry. Key is how to make the circle process work – possibly going out to the community.

Justice Lafrenière noted the many tools available for parties. Some parties have disputes regarding the proper custom law, but the lawyers need to raise the issues with the Court. By way of example, instead of relying on affidavits, there could be a hearing with witnesses in the community to hear the evidence of customary law directly.

Paul Seaman made reference to indigenous legal orders being revitalized, and possibly being brought within the court. He noted the good work done in the Litigation Guidelines. He provided an example of an indigenous legal order, where communities have put forward a position that an issue was addressed already within their legal system – if then brought in Federal Court, in Western parlance, this might be called a collateral attack. Where do the issues get heard now, if anywhere, and what deference is given by the Court?

Chief Justice: we need a sense of the degree of consensus within the bar. Should the court look at these matters as *res judicata*? Perhaps a judge could recognize this in a court proceeding i.e., that the matter was previously resolved. It clearly raises concerns if one member of a community relies on an internal decision while another challenges the underlying issue *de novo* separately in Federal Court.

Justice Grammond: this raises the question of how to extend principles of administrative law (i.e., the proper relationship between decision makers) to indigenous decision makers.

Robert Janes made a rule suggestion: in more recent modern treaties, in any court case in which interpretation of indigenous law arises, notice will be given to the indigenous party, which will have an opportunity to be heard. Reference was made to *Beaver v. Hill*, 2018 ONCA 816 (CanLII), a case involving family law. A key question: what is the position of the First Nation? In any proceeding, it is important to give notice to the First Nation.

Justice Lafrenière: this would be similar to a s.57 re notice to Attorneys General of a constitutional question.

Chief Justice Crampton gave examples of initiatives: round courtroom in the case involving the Blood tribe; smudges; swearing by a witness of an oath on an eagle feather; Elders assisting in dispute resolution processes; mediation conducted in Cree; encouraging parties to resort to indigenous approaches to mediation.

He had spoken with Scott Robertson on a panel a few weeks ago about these initiatives, who had undertaken to go back to the IBA to solicit further proposals.

Prothonotary Ring: reference to the importance of mediation in this area. Is there room in the Guidelines to make more emphasis on use of customary approaches to mediation? In many cases, she raises the option to go to the community, but the lawyers often prefer to be in Calgary / Edmonton. What is best way to raise these issues in the mediation? In a mediation brief or otherwise?

Chief Justice Crampton: it has been difficult to get the word out regarding existing options set out in the Guidelines. It would be useful to get a panel at the annual CBA / IBA conferences to review the various options. Perhaps a town hall at or on the side-lines of a conference would be useful.

Andrew Baumberg noted a previous comment by a member of the Committee: many First Nations have a retainer with a general practice firm (e.g., one that does general contract / employment law issues), and so the lawyers will not necessarily attend a CBA / IBA conference on Aboriginal law.

Paul Shenher echoed Prothonotary Ring's and Chief Justice Crampton's comments. The Department encourages support for mediation processes, including via the recent Directive on litigation. The Litigation Guidelines encourage AG counsel to support mediation and to consider whether the dispute can be resolved through indigenous legal traditions or other processes. There is probably work that can be done on the Department's side to get the word out. It is possible to use traditional indigenous principles within mediation – they are quite flexible.

Justice Strickland: election code matters come before the court quite regularly. Often there is personal interest of parties, but some merit to hold hearings in communities. Some parties might present their case differently in front of the whole community than they would at a hearing farther away in a courtroom. However, by the time the case gets to a judicial review hearing, positions are quite entrenched. This could be mitigated by early meditation in the community. A key question, though, is how to get two parties to agree to a mediation process that might not be in their individual interest?

Kate Gower noted that "getting the word out is a challenge." The idea is about increasing communications. An out of the box suggestion: look to groups that have been successful in spreading their message e.g., the British Columbia Civil Resolution Tribunal manages to get its message across.

Pamela Large-Moran: as a mediator in indigenous communities, she agrees with Justice Shore: listening is a key part of healing and circles are about building consensus. For litigators and the court, with additional formality, it is a challenge to integrate the less formal indigenous processes. She always promotes the Court's Practice Guidelines. The Court has a leadership role across country. She agreed with Prothonotary Ring that the mediation process could be laid out more clearly. Sections 20 and 40 of UNDRIP speak to this issue. The way to move forward is the restorative approach suggested by Justice Shore.

Justice Lafrenière referred to options for consideration – a town hall, twitter, website.

Robert Janes: there are a number of pan indigenous organizations that would probably be receptive to a presentation by the Court: there are opportunities for the Court to help mediate, or use indigenous protocols to proceed, etc. Most lawyers are not aware. When certain chiefs hear about developments that might impact the law, they contact him. Perhaps contact the AFN or regional groups. Sometimes the legal dispute hides an on-reserve / off-reserve conflict. A hearing location somewhere between an urban centre and the indigenous community might be a good approach.

Pamela Large-Moran: parties can start on a good note with agreement on an appropriate location to hold the mediation, and the process.

Sheldon Massie: the Department held a symposium on May 14 / 15 on this issue, with a Report to follow. There was a session on the interaction between indigenous and non-indigenous legal systems.

Action: Sheldon Massie to circulate a report on the May 14 / 15 Symposium.

Justice Lafrenière: the Chief Justice spoke at that event. It is important for the Court to be available for all sectors of the bar. Regarding the town hall proposal, the IP Bar has a meeting in Ottawa of lawyers from across Canada, with approximately 150 people participating in a town hall with members of the Court, followed by a luncheon, an afternoon CLE, and an evening dinner. There are usually many practical outcomes from the table discussions. Within the Committee, we are familiar with the various initiatives, but the wider bar is not. A town hall requires considerable effort to organize. The Fall event in Ottawa is ideal, as it would be accessible for a larger group from the Court.

Gaylene Schellenberg: the CBA has shortened the annual general meeting, but will look at opportunities for a court report.

Robert Janes: there are active local sections – they have regular evening sessions, and are always looking

for speakers; we could reach out.

Justice Lafrenière: we are open to doing this.

Sheldon Massie suggested that the Law Societies be approached to communicate to their membership – they have comprehensive distribution lists.

Pamela Large-Moran: this could be considered by the law societies for mandatory training for mediation in their codes of professional conduct. It should be part of the discussion with law societies.

Robert Janes: on the outreach discussion, a working group could be struck to develop an action plan and do follow-up as needed e.g., formulating a statement about giving notice to a community when an issue of indigenous law arises. It could be an amendment to the guidelines.

Justice Lafrenière: this is something the case management judge should raise with the parties. Oftentimes, litigation takes place with detailed knowledge by Chief and Council but without wider community knowledge.

Prothonotary Ring: should there be notice to the wider community?

Robert Janes: there needs to be a discussion about who should get notice. In some cases it may be notice to Chief and council, but in others it may be wider notice.

Justice Lafrenière: this could be implemented immediately. Case managers should be advised right away. We cannot amend the Guidelines piece-meal.

Robert Janes: a communications plan would be a great idea.

Pamela Large-Moran: there are two parts – communications to lawyers, and also to the wider indigenous communities.

Prothonotary Ring: with band election disputes, many litigants are self-represented, who must give notice of the Judicial Review Application to all other candidates, which can be challenging. We need to be careful about notice requirements for individuals.

> **Action:** amend the guidelines to address the venue for mediation – to be on or near the indigenous community.

Justice Lafrenière: the Court can consider these issues and provide an update – at this stage, it is not clear whether a working group is needed.

Robert Janes: perhaps not, but some take-away work might help – e.g., for lawyers to raise within their local bar executives to run a CLE.

Pamela Large-Moran: perhaps a collaborative sub-Committee to explore options?

Agreed.

> **Action:** a Communications sub-committee was struck with Pamela Large-Moran, Robert Janes, Paul Shenher, Andrew Baumberg.

4. Update – Subcommittee studying the Identification and Appointment of Indigenous Law Experts to Assist the Court (Rule 52 of the Federal Courts Rules)

Andrew Baumberg noted that the draft Framework was revised and circulated to the Committee for final review, following which it could be published as an amendment to Guidelines.

Justice Grammond suggested that it might get more prominence as a separate document.

Justice Strickland / Robert Janes both suggested that it be added as an addendum to the Guidelines.

> **Action:** for Justice Lafrenière / Andrew Baumberg to advise Justice Rennie (Chair, Rules Committee).

Andrew Baumberg: it is necessary still to confirm membership of the Indigenous Law Advisory Committee created under the Assessor Framework.

Robert Janes proposed that we ask members of the initial advisory group if they are willing to sit on ILAC. There is a need, though, for regional representation.

Justice Lafrenière agreed.

> **Action:** for the creation of the Indigenous Law Advisory Committee, Robert Janes / Andrew Baumberg to discuss contact with existing advisory members.

5. Framework for Receiving Oral History evidence

Justice Lafrenière noted that a document was circulated in November, with comments received from the Department of Justice and Court law clerks. Further comments are invited, following which the DOJ / clerk comments will be integrated and presented at the next meeting.

Prothonotary Ring had a few comments:

- Page 1 (methodology) – at the end each case description, indicate where the case is being conducted.
- Pg 4 – *Restoul* case – it is not clear which Court is involved.
- For reference to commission evidence, indicate the Rules that are applicable.
- At the end of the protocol, under the heading of exclusion of witnesses, there is a comment that witnesses may testify as a group. In other contexts, this committee has discussed the possibility of witnesses testifying as a panel. Perhaps leave a place-holder there to fill in when there is concrete experience.

Robert Janes: Indigenous Elders have testified in a group in Australia as well as at the National Energy Board.

Justice Lafrenière: where this has been done in a tribunal, we can use it.

> **Action:** Robert Janes to contact NEB to get reference material. Jared Wheeler to get material from the Manitoba Public Utilities Board.

Justice Lafrenière referred to a few issues raised by the law clerks who worked on the first draft:

- Issue #1: *Whether this protocol should be framed as broadly as possible to apply to actions and applications for any type of Indigenous oral evidence (as well as supporting demonstrative evidence).*

Robert Janes: this needs careful attention.

> **Action:** Robert Janes / Paul Shenher to discuss separately how broadly the Framework for oral history evidence should be framed.

- Issue #2: We agree that removing the term Elder would make sense in order to broaden the protocol to apply to communities where holders of oral history may not be called Elders.

Agreed.

- Issue #3: We are proposing using the term “Indigenous oral evidence” to replace the term, “oral history” and other variable phrases used throughout the document to refer to the type of evidence to which the draft protocol is directed.

Robert Janes disagreed. This would be a much broader category of evidence and includes oral evidence of *current* practices.

Action: comments to be submitted as soon as possible on the draft Framework for Receiving Oral History evidence, after which the document will be finalized for review at the next meeting. Deadline: September 30.

6. Approach to deal with chronic disputes

Justice Lafrenière: the Court set up a core group of judges for this practice area, developed a triage cases, and now has a special process to assign specific judicial officers to be more efficient, having consideration of previous cases, so that the judge / prothonotary would not need to re-learn a lengthy litigation history.

Robert Janes: can the specialized group be formalized in the way some courts have a commercial list?

Justice Lafrenière: the Court has identified the core group of judges with particular interest in IP law to the IP bar, so there is no difficulty sharing this list to the bar; prothonotaries are all included by default, given that they all work on these cases. The list is not meant to diminish the capability of other judges.

Action: Andrew Baumberg to circulate the specialized practice list for Aboriginal law.

Andrew Baumberg: is the follow-up on the mediation roster to be discussed here or separately?

Pamela Large-Moran: the issue has not been discussed yet with representatives of the Department.

Justice Lafrenière: the mediation roster can be discussed separately. It should be noted that there is a need for proper training to do this type of special mediation work.

This agenda item can now be removed from agenda.

7. Scope and Cost of Aboriginal Litigation

Prothonotary Ring provided background on the sub-Committee, with its initial focus on development of a survey of the bar. A draft was circulated to the Committee for comment. Key questions: what are we hoping to achieve, and does the current draft meet that goal? Next steps: following comments, the Court can make revisions and then implement.

Robert Janes: it is actually not too long. Most questions focus on the impact of an increase in scope and cost, whereas some leave out reference to increase. This needs to be reviewed. For the impact on cost, a reference to the need for expert evidence should be added, as well as historic documents. He assumed that this would be converted to a proper online survey tool.

Justice Lafrenière: impact could be either positive or negative. We need to have a range that includes both directions e.g., -5 to +5.

Robert Janes: regarding the proposal for the Court to do survey drafting, it is important for someone with extensive experience with survey drafting to be involved so as to avoid unintended outcomes.

Kate Gower: perhaps ask a question regarding the size of the respondent’s law firm.

Action: Gaylene Schellenberg to get a CBA survey question (re law firm size) for reference.

Kate Gower: there is a question in the survey on the Guidelines. Are there any other topics (e.g., from this meeting) that could be flagged during the survey? There is usually more uptake if there is some incentive (e.g., possible prize).

Action: further comments on the draft survey to be circulated in writing.

8. Electronic Trials

Presentation by Kate Gower of her PPT slides, including a video of the set-up for the *West Moberly* e-trial. Some key considerations:

1. **Judges have a role to play** – many parties do not want to discuss the possibility of an e-trial unless they are ready to proceed. A basic training for judges might assist.
2. **There is a lack of public information regarding the benefits of e-trials.** There are only a few cases with a formal Order related to the e-trial process. There is considerable work in individual cases, but often the work is not then easily available after the trial has finished.
3. **Electronic document sharing –** there are numerous creative ways to share exhibits, including USB key and email. There are two e-trial programs on our radar this year. First, Caselines, which has been running in all courts in England and Wales for the last four years: this Spring Caselines was used for the first time in Canada (*Hutchison v Moore*). Second, the REDI e-trial program, which was used by Justice Zinn in two Federal Court Cases (*Southwind v. Canada* and *Jim Shot Both Sides v. Canada*). [It was also used by Justice Mandamin in *Alderville v. Canada*]
4. **Electronic judicial review hearings –** the record is usually quite well defined. A pilot project might be considered by parties and the Court, built on the expected efficiencies from the electronic process. This would provide an opportunity to get more metrics re process efficiency. We expect that a hearing in the electronic environment saves between 25-40% of the Court days. For example, Justice Zinn's *Southwind* case was scheduled for a 100-day trial, but it required only 72 days.

Justice Lafrenière: the Court is open to parties filing electronic copies without a requirement to file a paper copy, which simply results in additional cost. Ideally, this would be raised early in the proceeding so as to avoid last-minute requests to shift to an electronic hearing after most of the record has been filed in paper.

Robert Janes: is it necessary to make a large investment in a particular e-trial program or platform before the parties and the court could start enjoying the benefits of an electronic trial?

Kate Gower: there is no contract commitment for a pilot project, i.e. the court would not be "locked in" to using the e-trial software after a pilot project. Both Caselines and REDI allow the parties and the court to decide if they want to do an e-trial for just the case before them, or for a series of Judicial Reviews. With these e-trial programs, parties and the Court would only need to have their own laptops and internet connectivity to run an e-Hearing.

Robert Janes: is webcasting possible, or sharing of documents remotely?

Kate Gower: Justice Zinn provided webcasting in a recent trial via Zoom. For documents, there are different access options to see the documents.

Justice Lafrenière: the Court already provides a webcasting option.

Kate Gower: there are clearly big efficiencies, but only limited metrics. It would be useful to have a

defined pilot to get hard data to provide better support for future e-trials. As noted earlier, we expect that a hearing in the electronic environment saves between 25-40% of the Court days. For example, Justice Zinn's *Southwind* case was scheduled for a 100-day trial, but it required only 72 days.

Prothonotary Ring: there do not appear to be any clear guidelines for use of webcasting. It appears particularly useful in Aboriginal law proceedings.

Justice Lafrenière: this should go in the Guidelines.

> **Action:** webcasting options should go into the Guidelines, possibly along with the Indigenous language summary pilot framework.

Robert Janes: much of the resistance for lawyers is that most of their experience with document management software (e.g., Summation, Ringtail) is negative. There is a significant training cost. It is useful to demonstrate that there would be a shorter and less expensive learning curve.

Prothonotary Ring: one issue in Aboriginal law relates to historic documents. Are there any advances in computer hand-writing analysis for searches?

Kate Gower (reference to last slide): when people go into the electronic record using optical character recognition, they expect searchable records. We need to manage expectations given the historic documents. If there is a subset of documents that we consistently bring to court but cannot read, perhaps we could have a common book of documents (e.g., for treaty 8) with acceptable transcriptions.

Robert Janes: is the goal of the Court to move to e-filing / e-hearings eventually? If the default is electronic unless a party wants paper, there will likely remain a few lawyers who continue to prefer paper for a long time – will they have a veto?

Justice Lafrenière: the Court is moving to an electronic process, though there are exceptions that may need to be made for self-represented litigants. The Bar needs to move in this direction.

9. Common list of authorities
Notice / Volume 2: Aboriginal Law

Justice Lafrenière: the list has not been updated for many years.

Andrew Baumberg provided background regarding the upcoming Rules amendment, such that if a document is available for free online, a full paper copy does not need to be included in the book of authorities, but only the excerpt that is to be relied on.

> **Action:** send updates to the Common list of Authorities.

Kate Gower raised a question regarding the reference to the excerpt that you want to rely on. Is there a risk of needing to rely on some other page. What happens?

Justice Lafrenière: the Court can easily take notice of other paragraphs. It is very useful to have a compendia of only the most relevant documents.

10. Varia

No items for discussion.

11. Fall 2019 Meeting
Indigenous Bar Association annual conference: October 31 – November 2, 2019 (Ottawa). Committee meeting on Oct 31. All agreed.

END OF MEETING