Federal Court ~ Aboriginal Law Bar Liaison Committee Meeting	Cour fédérale ~ Barreau - droit des autochtones Réunion du comité de liaison

October 19, 2010
Vancouver, B.C. (with Teleconference Access)
Minutes

Present: Elder Greg Sam, Elder Fran Guerin, Justice Lemieux (Chair), Prothonotary Lafreniere, Aimée Craft, Kim Guerin, Grace Auger, Sharon Venne, Aimée Craft, Mary French, Kathy Ring, Sheila Read, Julie Gordon, Alistair Hull; **Via Teleconference:** Catherine Twinn, Andrew Baumberg

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Elder Sam offered an opening prayer, and **Justice Lemieux** welcomed members of the Committee.

Report on Turtle Lodge Meeting

Justice Lemieux provided a short summary of the meeting at Turtle Lodge, naming some of the key participants, including Justice Slade, Chair of the Specific Claims Tribunal. He noted that the Elders requested continued dialogue with the Court and development of an education program. Since the meeting, the Court has contacted the National Judicial Institute to begin development of a framework for this initiative, with Elder Dave Courchene agreeing to be involved directly in the planning. The Committee will be kept advised of on-going work. On the issue of oral history guidelines, Justice Lemieux confirmed that the Court would be proceeding with development of guidelines based on all the comments received.

Regarding the minutes, **Ms. Twinn** referred to a significant item that was omitted from the Elders' statement due to the shortage of time to review the final written document, though earlier accepted by the Elders in the oral deliberations:

"An independent, inclusive and regionally diverse group of Indigenous Law Keepers (Elders) will be appointed to:

a. educate judges about indigenous customs and legal traditions;

b. serve as co-mediators in mediated proceedings; and

c. assist the pre-trial and trial management of aboriginal legal matter."

Justice Lemieux agreed that in principle the element is appropriate, but on a procedural point, it was not actually raised at Turtle Lodge. He recommended that we contact Mr. Courchene to get his views on the proposed change.

Ms. Twinn suggested that her explanatory note, sent by email, could be added to the minutes of the Turtle Lodge meeting.

Ms. Craft suggested that the process for adding the missing element should be one for the Elders

to decide, though noting that the Elders did not have a formal structure or secretary.

Ms. Auger noted that Mr. Courchene offered his space to be used for the Turtle Lodge meeting, but she was not aware that the Elders had formally nominated him. She added that the IBA has tried to raise money to arrange meetings with the Elders, but they have limited resources to proceed. They would like to try to arrange another meeting with the Elders to discuss the next steps following the Turtle Lodge meeting.

Prothonotary Lafreniere suggested that these issues be clearly noted in the minutes for this meeting, and that the Court slowly move forward, taking account of these issues.

Ms. Fran Guerin agreed that the Elders should hold a teleconference to follow-up on the last meeting, but that it is important to resolve an issue that might remain regarding the minute of the Turtle Lodge meeting.

Justice Lemieux reiterated the support of the Committee for the Elders' on-going process.

Ms. Craft noted that there was a need for funding someone to assist the Elders.

Justice Lemieux offered to speak with the Chief Justice concerning possible funding for the Elders' work.

Elder Sam spoke about process issues. We all agree to work together, but we need to identify an authentic protocol for this work. The Elders need to meet to consult with each other, and the support of a graduate student to document the discussions would be helpful. There are underlying feelings in those who participate in the court system, which must be resolved. You need to understand protocol, and the language associated with this protocol. Like "Meegwetch" – to show respect. We need to start teaching these protocols, and the language. He noted the need to discuss the proper location for upcoming meetings, and discuss the role of the Elders and who would be a spokesperson for the Elders. He welcomed the opportunity to fund someone to assist the Elders. He invited members of the Committee to come to Vancouver Island to visit his community and enter a dialogue. This is a teaching - *a training* - that is necessary. He would like to be involved with training and help identify the people who are available. He noted that he has consulted with Elders and with Court workers at the local level. He noted that the Elders are willing to take the responsibility for education. It is important for the members of the Committee to be open to learn. He thanked the Elders who participated at Turtle Lodge.

Justice Lemieux noted that the meeting at Turtle Lodge was a first. The Elders offered to provide their teaching, and the Court agreed to continue the dialogue and education process.

Elder Sam again thanked the Elders at Turtle Lodge, and noted the importance of not being afraid of the teaching, which comes in many different forms. The teachings, protocol and language are very important, and one must earn the right to receive them. Also, "many of our people" are very shy, and must be asked to offer something. He repeated the term "Meegwetch" or "Hych'ka" (thank-you).

Justice Lemieux thanked Elder Sam and acknowledged his request to be involved in the education process. He added that this would be a matter for the Elders to discuss and then make suggestions.

Report on Phase II Practice Guidelines ("Toolbox")

Justice Lemieux noted that these guidelines apply mostly to actions (trials), whereas the Court deals mostly with judicial review applications. **Prothonotary Lafreniere** added that there has been a lengthy series of discussions with the Court, Elders, and members of the Bar to discuss issues around Elder testimony and oral history. We are trying to understand what issues are of concern, so that when lawyers bring forward proposals, the guidelines will provide options and a list of things to be considered by the Court and litigants. We are trying to understand how the Elders have been treated, and maltreated, by the Courts. He reiterated that there has been mention in the past of criminal court issues, but that the Federal Court does not have jurisdiction in this area. Our goal here is to create guidelines that go some way to assist the litigants and Court so that Elders evidence is treated with respect and flexibility. At Turtle Lodge, it was noted that further work needs to be done with the Elders, and so we will wait to hear further from them. The Court hopes to prepare a draft for circulation for members to have a further say on the issue.

Ms. Auger noted that the Elders showed an example of discipline. First Peoples had their own form of governance and discipline, which was respect-based. Elders teach in different ways, and you will learn lessons in different ways. It is good to see this first hand. She would like to see much more reliance on Elders directly in dispute resolution. This requires a real understanding, and emotional connection, to break through different layers of resistance. She gave a personal example of her own experience learning this.

Elder Fran Guerin noted again that the Elders are very grateful for Mr. Courchene's efforts to make the Turtle Lodge available and all his work. The issues with the Elders' statement arose as a result of the time pressure. There is no slight intended to Mr. Courchene.

Ms. Twinn added that she hoped to work with the IBA and the Elders to reach one mind on these issues. The omission, and the system giving rise to the omission, will be resolved, once the Elders and the IBA have their discussion. The Elders and the IBA need to discuss what has happened and what needs to be in place in order to work effectively and collaboratively together. The goal is to develop a Memorandum with Protocols to ensure good, transparent, accountable, unity building systems generating inclusion, equality, consensus, balance, fairness and truth.
She also noted that the Elders will select their own spokesperson, if any, to represent them to the Federal Court, and that the Elders need to discuss a number of internal issues, including the spokesperson issue, as there is obviously misunderstanding that permeates within and without.

Judicial Review Paper

Ms. Read noted that she circulated a recent discussion paper regarding judicial review. It is important to think about options for dispute resolution that go beyond direct adjudication in the Court. When a dispute arises, her paper recommends directly going into the case management stream for community-based resolution.

Justice Lemieux noted that the court deals primarily with judicial review issues: band election, chief and council issues, the firing of a teacher or police chief, and other governance issues. The question is to find a mechanism where community consultation and decision-making can take place. That is where the Elders come in. In many of these cases, the First Nation has an Elders Council, even though the nature of this council varies from community to community. The key though is for the community to find mechanisms to resolve the dispute. He referred to the work of Justice Mandamin, where the community found ways to resolve issues without the Court being so directly involved. This is a "win-win" situation. He added that the Court is doing this already, in practice. He gave an example in which he was involved of a case dealing with old age pension issues. A judicial review came in and went directly to case management, without even a government affidavit filed in response. The parties sat down, including the First Nation and federal government, and arrived at a solution. He gave another example involving Justice Mandamin, again relying on community protocol to resolve the matter.

Ms. Read noted that she is comfortable in the Courtroom, and its formal rules of practice, but many parties are not. When you go out to the community, with strong community participation, the finding in other areas are that community-lead resolution has long-term likelihood of acceptance of the results.

Justice Lemieux noted that the Court has in many cases recognized the role of Elders councils. This type of decision is better than a unilateral decision of a Federal Court judge.

Prothonotary Lafreniere noted that the suggestions are already in practice. However, the Court does not usually know whether the parties are amenable to alternate dispute resolution. The parties must advise the Court. Also, **Rule 390** allows for a stay of proceedings up to six months (possibly with an extension), by Court order, to allow the parties to try to resolve the dispute themselves without the Court being involved, or with its assistance. For example, if there is an internal structure within the community, let this proceed on its own, or with the Court. He noted that in many cases, there might be no-one within the band who can resolve the dispute, but possibly someone in another band, or some other third-party arbitration, that can then be recognized by the Court.

Ms. Read added that she clearly did not invent these ideas, but simply was trying to catch them on paper to spark a discussion and increase awareness. In classic administrative law practice, for *each* separate decision under review, you file a separate judicial review application, resulting in several judicial review applications. These are "symptoms" of an underlying problem – it is more than simply one decision or another, though it may be difficult to get at the underlying issue.

Justice Lemieux noted the series of cases arising from Oka, with about ten different judicial review applications filed in Court.

Ms. Craft added that a number of CBA members have participated in some of these alternative dispute resolution processes. The internal dispute resolution is a very useful option. *Is it possible for the Court to issue some sort of practice direction to get the word out to the wider bar?* Also, regarding the possibility of Elders sitting jointly with members of the Court, the Court might

wish to consider how best to take advantage of this offer. There is expertise in the Court that helps moves the file along, but also expertise within the indigenous community (or outside) that can greatly assist.

Ms. Venne mentioned that this is a relatively recent phenomenon, primarily in the last 15 years. Sometimes it is necessary to bring Elders from another community, even another tribe, into the discussion. The Elders encourage early dispute resolution – they try to resolve matters before it gets to a serious conflict.

Prothonotary Lafreniere noted that the Court, in others areas, is able to identify the serious conflicts that require special attention.

Mr. Baumberg asked whether the committee proposed to revise the initial practice guidelines to include these suggestions.

Justice Lemieux suggested a short notice to the profession.

Prothonotary Lafreniere suggested that we try to work with the Registry to identify cases, and for Mr. Baumberg to discuss the matter with the Chief Justice regarding notification to the Bar.

Justice Lemieux described issues with the Court hearing election disputes, where parties often bring a motion for an interim injunction. He noted the Court's efforts to encourage the parties to proceed directly to the merits on an expedited basis, to allow them to avoid costly interim motions that do not resolve the underlying applications. The Court has the flexibility to set dates very quickly.

Ms. Craft asked whether this could also include recognition of indigenous dispute resolution processes.

Elder Sam noted the discussion around management of issues. It is important to understand the belief system, the rules and regulations in the community, in preparation for the case. Flexibility is key: in our community, consensus is fundamental. The challenge will be to utilize both worlds: we must be sincere within the circle, to practice what we are saying. This is serious business. There needs also to be fun and laughter, to help alleviate the tension.

Elder Guerin reiterated the issues raised by Mr. Sam and the importance of protocol and respect. There is a lot of ceremony, but time is given for each person to come to an understanding. We work towards a consensus, but we may need to define it for different purposes. We need to be respectful of different perspectives on a broad based membership.

Ms. Kim Guerin noted that the lawyers also need to be involved in the alternative dispute resolution process, as they are likely to benefit from the outcome if a particular side wins the case.

Ms. Craft suggested that a practice direction require that counsel include a recommendation in the application to court whether alternative dispute resolution is feasible.

Ms. Twinn added that the Elders and the IBA strongly support the inclusion of best ADR practices and procedures in the management of litigation involving Aboriginal people, right from the time a proceeding is commenced, a claim issues or a conflict arises. Judges, working collaboratively with Elders, must be skilled, sensitive and competent in effective, humane, balanced litigation management. Indigenous justice processes and laws can work effectively with mainstream Court processes and laws. Finally, Ms. Twinn requested that the Court provide a law clerk to work in collaboration with the IBA (she volunteered) to research comparable ADR provisions found in other Rules and unearth best practices and procedures for early management and case settlement that are appropriate and just to the needs of Aboriginal litigation.

Justice Lemieux was receptive to the proposal to have a law clerk conduct research on this issue.

Afternoon Session

Canadian Human Rights Act – Judicial Review Applications

Ms. Craft presented a preliminary overview of the Canadian Human Rights Act and relevant amendments. The initial Act included a provision that exempted its application to the Indian Act, until repeal of section 67 in 2008. At the time of repeal, an interpretive provision was included requiring a balancing of individual and collective rights. Application of the Act to acts of First Nation governments was delayed for 3 years, to begin in June 2011. As of this date, complaints may be made with respect to by-laws, membership provisions, and elections, among other issues. She then read the interpretive clause:

> In relation to a complaint made under the *Canadian Human Rights Act* against a First Nation government, including a band council, tribal council or governing authority operating or administering programs and services under the *Indian Act*, this Act shall be interpreted and applied in a manner that gives due regard to First Nations legal traditions and customary laws, particularly the balancing of individual rights and interests against collective rights and interests, to the extent that they are consistent with the principle of gender equality.

This clause raises significant questions regarding the balancing process, the nature of legal traditions and customary laws, and the inclusion of gender equality issues. These issues will be raised both before the Commission, with respect to its decision whether or not to accept a complaint, and then at the Tribunal. She indicated that she raises the issue more to identify questions than to propose answers, expressing a hope the Court will engage the process early.

Justice Lemieux provided an overview of the Canadian Human Rights Commission and Tribunal process and thanked Ms. Craft for flagging the issue.

Chief Justice Lutfy raised two questions:

> *Is Ms. Craft aware of any complaint that has been raised yet against a first nation? Has there been any comprehensive review of section 1.2 yet, or is it still too early?*

Ms. Craft noted there are as of yet no complaints directly against a First Nation, and there is still no comprehensive review, though the Canadian Human Rights Tribunal is developing a national response. She added that the interpretive clause only applies to complaints involving a first nation government, relying on the interpretive clause provision.

There was some discussion regarding the scope of issues that might be the subject of a complaint, referring to one active case before the tribunal involving child welfare and another of services available on-reserve versus off-reserve.

Chief Justice Lutfy noted that these are complex issues that might take some time to arrive at the Federal Court.

Ms. Craft added that Canadian Human Rights Commission refusals could be challenged on judicial review more quickly.

Justice Lemieux suggested that this be raised with the Court's education committee.

Miscellaneous Practice Issues

Representative Proceedings

Ms. Ring provided an overview of representative proceedings under Rule 114. She noted that many aboriginal cases are framed as representative proceedings – i.e. the proceeding is brought by or against a person (often the Chief of an Indian Band) acting as a representative on behalf of one or more other persons (often on behalf of all of the other members of the Indian band). Rule 114 governs representative proceedings and came into force on December 13, 2007. Since it is in Part 3 of the *Federal Court Rules*, it applies to both actions and judicial review applications that are representative proceedings. The procedural requirements in Rule 114 include special rules governing the style of cause and the discontinuance or settlement of a representative proceeding:

Approval of discontinuance or settlement
114(4) The discontinuance or settlement of a representative proceeding is not effective unless it is approved by the Court.

Style of cause
114(5) Every document in a proceeding commenced under subsection (1) shall be prefaced by the heading "Representative Proceeding".

It appears that some members of the Bar may not yet be familiar with this new rule, since some representative proceedings are being commenced and discontinued or settled without adhering to the requirements of Rules 114(4) and (5). She often sees a style of cause that does not clearly indicate that it is a representative proceeding, and so it is not resolved with formal approval of the Court. Litigants and the Court have a common interest in ensuring that representative proceedings are properly commenced, and that the settlement or discontinuance of a representative proceeding is made effective. Ms. Ring asked the authors of *Federal Courts Practice* (Saunders, Kinnear, Rennie & Garton) to modify their commentary relating to the general rules on discontinuances (Rule 165 and/or Rule 166), as well as the index, to note that there are special rules for discontinuance of a representative proceeding. She also prepared a short practice note within the department to group leaders.

Issues for Discussion:

(a) Are there any steps that can be taken by this Committee, the Federal Court Registry or otherwise to increase awareness and facilitate compliance with Federal Courts Rule 114(4) & (5)?
(b) Are there existing mechanisms in place to facilitate compliance with Federal Courts Rules 334.29(1) and 334.3 (class proceedings) quoted above that could likewise be applied to Rule 114(4)?

She noted that there are often discussions among parties leading to resolution, and it is important for them to be aware of the need for formal approval of the discontinuance or settlement. Finally, with respect to (b) above, the *Federal Courts Rules* governing class proceedings contain provisions that are similar to Rule 114(4). Rules 334.29(1) and 334.3 read:

Settlements - Approval
334.29(1) A class proceeding may be settled only with the approval of a judge.

Discontinuance - Approval
334.3 A proceeding commenced by a member of a class of persons on behalf of the members of that class may only be discontinued with the approval of a judge.

Prothonotary Lafreniere noted that there may be cases where there is a notice of discontinuance by an individual purporting to act on behalf of the group, when in fact not all the members of the group have knowledge of the discontinuance. It is useful to include this in the annotated act or to send a letter to the parties if they have not followed the rules.

Chief Justice Lutfy summarized the history behind the amendments to the rules. He asked whether it is possible for the Department of Justice to identify the representative proceedings that have been filed since 2007. Secondly, he added that it might have been useful to include automatic case management, as for class actions, though this can be remedied easily enough. If greater publicity is needed, this might warrant a notice to the profession, and possibly automatic case management could be proposed within the rules committee.

Ms. Ring noted that the Department can probably capture this information, adding that in practice most of these cases go directly to case management.

Chief Justice Lutfy asked that this item remain on the agenda.

Ms. Gordon added that she will communicate with Registry officers in Vancouver to ensure that they monitor the issue for compliance with the rules.

Management of Complex Judicial Review Applications

Ms. Read prepared a second paper on this topic for presentation at the Committee meeting. She noted that the Court is more often dealing with large judicial review applications that are not possible for resolution in a timely, summary manner. For example, environmental assessment and pipeline disputes. The more complex proceedings can be converted to an action, but are still strictly speaking a judicial review. She noted that the timelines in the rules are simply not feasible for these larger cases, and so proposed in her paper longer time-frames. When the parties go directly into case management, it is easier to focus on other issues in the application. She

noted that it is preferable not to have to spend too much time on the application for case management.

Prothonotary Lafreniere replied that it quite simple to request case management, typically done by letter. He recognized some of the suggestions in the paper that are meant to avoid too much paper / procedure (e.g., amendments to allow filing proof of service of the affidavit of documents, electronic service of documents, etc.). He indicated that it is preferable to minimize the number of motions filed in Court in a judicial review application.

Chief Justice Lutfy agreed with Prothonotary Lafreniere's comments, noting that it is preferable to go directly to the application on the merits rather than filing preliminary motions. He added that the Court intends to issue a practice notice regarding early identification of hearing dates, requiring the parties to set a clear time-frame for proceeding.

Prothonotary Lafreniere added that a key issue on judicial review is the scope of production of documents on the tribunal record. This is problematic – the applicant doesn't want to move forward without access to the documents, and the respondent wants to limit release of documents to those strictly required. In some cases, it disputes that there is even a decision subject to judicial review.

Chief Justice Lutfy noted that it appears, recently, that prothonotaries' decisions on preliminary matters are less often being appealed.

Prothonotary Lafreniere agreed with the need to revise the time-frames for procedural matters.

Ms. Read added that it is important to know early in the proceeding if the file is going to case management, and to have a common time-line established.

Prothonotary Lafreniere noted that in the West, at least, case management is usually allowed on the same day, even if the order designating a case management judge may take longer.

Ms. Ring noted some cases in the last few months with a voluminous file where it took a couple weeks to get a case management judge assigned and reviewing the proposed time-frame.

Prothonotary Lafreniere suggested that the letter with a proposed time-frame should be sent to the initial prothonotary who agreed to put the matter to case management, rather than waiting for the assigned case management judge.

Chief Justice Lutfy recommended that in exceptional cases a letter could be sent to the judicial administrator for timely appointment of a case management judge. The Office of the Chief Justice should not be delaying proceedings.

Ms. Ring noted that it usually takes about one to two weeks to work out a time-table with counsel for the other parties.

Ms. Read asked whether there is specific terminology that should be used in any request to the Court for special case management to ensure expedited assignment, where required.

Chief Justice Lutfy and **Prothonotary Lafreniere** agreed that counsel should simply submit a letter asking for the matter to be brought to the prothonotary's attention in the regional office, with a decision to be made for an immediate designation of the case management judge.

Prothonotary Lafreniere indicated that he was pleased to note in the discussion paper a suggestion to discuss the time for hearing. For actions, the Court is directly involved in scheduling the appropriate time required, whereas for applications, it is left entirely up to the parties to decide, given that there is no pre-hearing conference to assess the time required. It should be included in a discussion with the case management judge.

Ms. Read concluded that the key issue in the paper is that for complex matters, more planning is required rather than less.

Justice Lemieux endorsed comments regarding the need for more rigour regarding the amount of time assigned for hearing these applications.

Chief Justice Lutfy questioned whether the Court is regularly over or under-scheduling hearing time for these applications.

Prothonotary Lafreniere noted that in most cases, matters go smoothly, but in isolated cases, often with self-represented litigants, there are unreasonable requests for hearing time.

Ms. Gordon noted that she has heard cases of judges who are assigned two judicial review applications in the same morning with insufficient time assigned.

Ms. Ring concluded by saying that in nearly all cases, the Court is running very smoothly, with case management being assigned on a timely basis. She asked only that this well-running process could be improved slightly for judicial review applications.

Solicitor's Certificates of Service

Ms. Ring commented on a technical issue regarding Rule 146(1)(b), which provides that in respect of a document not required to be served personally, proof of service may be made by solicitor's certificate. There appears to be some confusion as to when exactly a solicitor's certificate of service can be filed. Some lawyers complete these certificates as soon as the court documents are put in the mail or delivered to the courier for service upon the other parties. Others wait for confirmation that the documents have arrived at their destination before completing the certificate. This difference in practice can have practical implications if the recipient of the document does not receive it on the same day it is sent and the document relates to a proceeding with tight timeframes for response. It would be helpful to obtain clarification from the Court on this point.

Issues for Discussion:

(a) Does a solicitor need to wait for confirmation of delivery before signing a Solicitor's Certificate of Service?

(b) If so, are there any steps that can be taken by this Committee, the Federal Court Registry or otherwise to increase awareness and facilitate compliance with this requirement?

Prothonotary Lafreniere noted that the certificate of service is an exception to the rule that normally requires an affidavit of service, which provides detailed information about the manner of service. There is inconsistent use of certificates of service – in some cases they provide no basic information. This is an issue of the *sufficiency* of the certificate. In other cases, it is questionable whether the certificate is *appropriate*, such as where a process server is used: this is hearsay, as the solicitor cannot certify what someone else has done. For courier or registered mail, service is only effective on the date of receipt. Certificates are generally restricted to regular mail or by fax, or service by hand. Otherwise, unless the certificate is accompanied by proof of when the document was actually received, it cannot be used. He noted he is open to receiving a certificate along with an attached proof of receipt (e.g., courier slip / email), but otherwise the Court is not able to confirm the date (and time) on which the service is effected. On the issue of sufficiency of the certificate, you need to indicate the document that you are serving and who you are serving, and where, so this information can be entered by the registry into the record. He referred to rule 141(2) for detailed information about the required contents of the certificate.

Justice Lemieux noted that the gate-keeper is the registry, which can bring the matter to the court for direction.

Seeking Directions in a Specially Managed Proceeding

Ms. Ring raised a last point, under Rule 54, which allows a party to bring a motion for directions concerning the procedure to be followed under the *Federal Courts Rules*. When a case is being specially case-managed, can a party seek directions, on consent, by letter to the Federal Court Registry, or is a motion required pursuant to Rule 54? If Rule 54 applies unless it is otherwise ordered, it would be helpful if the case management judge could issue a direction when an action first becomes a specially managed proceeding (perhaps as part of his/her initial Case Management Order) allowing the parties to seek directions on consent by letter rather than by a formal motion.

Prothonotary Lafreniere noted that in a managed proceeding, a letter on consent (preferably with a draft order/direction), asking for dispensation of the requirement to file a motion, should be sufficient. The normal process is to propose a draft direction or order, and the Court will decide whether or not to grant it. **Important:** don't ask the court to create the direction / order.

Common list of authorities

Mr. Baumberg noted that printing of binders (for chambers / courtrooms) is half complete, after which we can formalize the list on the Court web site.

Next Meeting

The next CBA conference is planned for April 28 and 29 in Winnipeg, at Hotel Fort Garry. April 27 is the proposed date for the next meeting.

Justice Lemieux summarized the agreement at the meeting:

1. the IBA will discuss with the Elders how they wish to proceed on the education process (Mr. Baumberg will assist with arrangement of a teleconference with the Elders);
2. regarding the issue of an omission in the Elders' statement, the matter is noted on the record and will be further discussed by the Elders to decide how they wish to proceed;
3. the Court will consider all the recommendations over the last few years for development of the next phase of practice guidelines;
4. for the judicial review paper, there was strong endorsement from the committee – in conjunction with the Chief Justice, we will discuss how best to raise aware of practice options (e.g., possible practice direction); this can be circulated back to the Committee for comment, but could simply summarize the recommendations in the discussion paper;
5. regarding the Canadian Human Rights Act amendments, we shall refer the matter to the Court's education committee, chaired by Justice Mactavish; this might be joined with the other education process to be developed with the Elders;
6. regarding representative proceedings, the matter can be referred to the rules committee for consideration of a minor amendment to allow for automatic case management;
7. for the discussion paper on complex applications, the matter will be considered by the committee and discussed at the next meeting;
8. for the issue of solicitor's certificate, Prothonotary Lafreniere will issue reasons the next time the issue comes before him, which will allow for clarification for the registry and litigants.

Ms. Ring noted that she is speaking at an Insight Conference in November on complex litigation regarding the phase I guidelines.

Elder Sam offered a closing prayer.