Federal Court ~ Aboriginal Law Bar Liaison Committee
Thursday, October 19, 2017
Halifax, Nova Scotia

MINUTES

Attendance
In-person: Justice Roger Lafrenière (Chair), Justice Michael Phelan, Prothonotary Martha Milczynski, Professor Tuma Young, Krista Robertson (CBA), Christina Gray (IBA), Julie Blackhawk (DOJ).
Teleconference: Chief Justice Paul Crampton, Justice Michel Shore, Andrew Baumberg, Manon Pitre (Registry), Judy Charles (Registry), Robert Janes (CBA), Sheldon Massie (DOJ), Paul Anderson (DOJ).
Regrets: Justice Leonard Mandamin, Justice Cecily Strickland, Justice Ann Marie McDonald; Scott Robertson (IBA).

1. Opening / Review Agenda & Minutes of May 31, 2017.
Minor changes were proposed to the minutes: "integration" changed to "interaction" (in comments of Dr. Stevenson); correction to name (Sheldon Massie); removal of Michal Jerch and Kathryn Tucker from attendance list. The minutes were approved as amended.

2. Discussion: how to make space for Indigenous legal traditions (procedure and evidence) in Court process
Justice Lafrenière indicated that the Committee is looking to propose changes to Court practice and rules to make it easier for Indigenous people to access the Court.

Professor Tuma T.W. Young, Assistant Professor, Indigenous Studies, Cape Breton University, presented his paper entitled "L'nuwita'simk: A Foundational Worldview for a L'nuwey Justice System."

After introducing himself, Professor Young started by noting that governance institutions, and in particular dispute resolution and justice systems (for the purposes of today's presentation), would work better if they were based on the underlying world views of the people they affect.

Reclaiming the justice system – how would it work? He drafted his paper in part based on his experience with the Tribal Court in Arizona: although all participants were indigenous, they still relied on the child custody code that mirrored the Arizona state code. This was common with many of the tribal courts set up in the United States. More recently, he heard requests by members of the L'Nu community for a justice system that was staffed by Indigenous people. However, he questioned how this followed L'Nu tradition if the only change was in relation to who administered it. There are numerous studies that show this doesn't work. A different perspective was needed.

Every culture has a worldview – how they see the world, including unique protocols and regulations. He told a story of starting work as a lawyer in downtown East Side, noting that many of his clients knew much more about the legal world than he did. There are many worlds, some of which are unfamiliar, and as one moves into a different world, one must learn the protocols for behaviour.

He gave another story about the development of law described in his paper related to protocols for the Pow-Wow. In some cases, something would be cited as law when, in fact, it was simply 'made up' based on something heard that may have been misinterpreted.

Where are our laws? They are in our language, stories, songs, chants, dances, ceremonies. That is where you will find them.

He gave another story about the traditional marriage custom, with certain protocols both for marriage and for divorce. Although these protocols might be used, there is a challenge to make them work in contemporary times, given the separate provincial laws for marriage and federal laws for divorce.

The challenge here is how to make these Indigenous legal principles work in harmony with the Federal Court rules, such as for election disputes.

The primary goal is to resolve disputes. We want to have a healthy community, but disputes arise. We do not follow the medicine wheel, but instead the 8-pointed star. The first quadrant is the dispute. The facilitator then tries to move them to 2nd quadrant – taking the parties apart to allow a time for healing. Then bring the parties together to try to reach an agreement (sometimes translated as forgiveness, but this is not quite accurate; it is simply that an agreement has been reached). This is often where we leave the justice system, but the parties are still left without resolution in their relationship. They need a feast or some other protocol to help restore the relationship so that they can live in the same community. This is what is needed in addition to the standard court adjudication. He gave a story of the separation of a couple to illustrate the extra protocol needed to restore balance in the community.

With all things, there is a state of flux – justice systems, people, and relationships all need renewal.

You have to look closely at the tribal community to find the relevant stories, such as *pre-contact* stories (Blue Sky stories here, or Nanabush or Raven stories for other First Nations) and then *contact* stories. He gave a story of an early contact story about the arrival of French people on the East coast, and how they ate only cod. The story showed underlying aspects of the relationship.

He then went on to discuss civil disputes within indigenous communities – it is a question of treaty interpretation under the Peace and Friendship treaties and how they interact with the Indian Act. Where the two systems meet, there could be a hybrid.

He then gave a story from federal Indian day school in grade 8 when a substitute teacher came in, and as an exercise, asked the children what they wanted to do when they grew up. Some groups responded that they wanted to be teachers, lawyers, doctors, etc., but the group lead by Professor Young said that they would be "social assistance recipients." He explained that the teacher had told the students they could be anything, yet there were no Mi'kmaq judges, lawyers, doctors, police officers, teachers, etc., so it was not fair for the teacher to give the children false hope that these were attainable. But later, there were changes – Indigenous people entered these professions, though it took a long time. They could then use the indigenous stories and language to help understand.

He described a traditional 'journey' story of going into the deep dark forest and coming out changed. Same with him – he was one of the first to go into law school – when he came back to tell others about his experience, he had been changed.

He told a story of a legal conference in Nova Scotia in Membertou involving senior judges and others, and then meeting an acquaintance at the university cafeteria who saw him all dressed up, and asked about him attending the event. He said that it is easy, once you know the protocols. The basic indigenous principle is that you treat everyone the same: *with respect.*

He then described language – the Eastern Algonguin languages were different from the Western. They are also very different from English. Mi'kmaq language focus is on verbs / actions, rather than the English focus on nouns or states of being. For example, "guilt" as a static concept is not easily translated, but becomes an action. The sentence structure is simple, but the word structure is very complex. The underlying legal principles are built into the language, so any effort to integrate Mi'kmaq dispute resolution processes into the Federal Court process should consider linguistic perspectives.

He then gave a few examples of Mi'kmaq language.

Judge is someone who counsels, who corrects behaviour.

Nujo'teket: "witnessing." In contemporary usage, this term is generally restricted to the sense of witnessing a wedding ceremony. Traditionally, however, it referred to the need for any solemn agreement to be formally witnessed and subsequently recorded and transmitted to future generations through oral tradition and stories.

A'nus'tumakwek: the word came up in a dispute resolution process in which a young woman had been drinking and driving, causing an accident and death of another woman. In the sentencing circle, the mother of the car accident victim did not seek any punishment, relying on this term. It is loosely defined as "they have experienced the pain that they have caused." The family of the woman accused of the crime had also suffered a terrible event – the death of the accused woman's sister, who had been found dead in the harbour.

We can look at ways to incorporate indigenous protocols into the Federal Court. The challenge is to understand where the legal principles come from – language, stories, songs, and ceremonies. How do you understand where the law comes from? Perhaps a hybrid system is possible, with neither perspective being dominant. One needs to go on a journey and come back with understanding. One needs a commitment to explore.

We need to think about it in a decolonized approach. What does this mean? One needs to enter into a ceremony to remember what has happened, to mourn the losses, and then to dream about the future, make a commitment, and take action to achieve the dream. This is the decolonized approach. This is similar to his story from grade 8 – we could not know, but we could dream and then take action.

He gave some examples from Indian Act election disputes. They were previously every 2 years, but have been changed to 4-year terms to avoid constantly being in election mode, which is particularly problematic if there are disputes after the election,which drag out almost until the next election.

He noted the discussion regarding corruption in election processes. There is some judicial commentary, but one also needs an understanding of the community perspective – there may be a slightly different understanding. We need to understand the right process for election of a government. Our Mi'kmaq legal principles focus on *prevention* rather than simply *resolution*.

During an election, people are often canvassing for electors' support, making promises, etc. When a leader is put up, it should be by consensus, rather than a divided ballot. There is another term for leader which includes an indication of how they should do their job and how they should behave. The judge who reviews an election dispute can counsel good behaviour.

What do we need to do as a community to avoid disputes having to be brought to Federal Court? Some communities hold an election feast, though in some cases this can be more divisive than helpful. Other types of ceremonies are possible, though, such as the taking of an oath. For example, when he was called to the bar, he had an oath, but he was told that he needed to take one more oath: not to use his knowledge to harm his people, but to help. Perhaps a similar oath by the leadership is needed. This could be included within a judgment – the person shall return to the community and swear an oath that the behaviour will not be repeated.

A primary challenge: he had asked a retired judge whether she considered the residential school issues, and she replied that she thought about it every day, but could consider it only if the lawyers formally pleaded it. Part of our job as lawyers is to bring indigenous legal principles to the Court; it is then for the judges to consider it.

Our laws, these stories, are brought by the sacred birds, who have sung the sacred chants.

Justice Lafrenière thanked Professor Young for his presentation and opened the floor to questions.

Justice Shore noted that Professor Young spoke of perspectives. The common language seen through many communities speak of the wisdom gifts received from the Elders – such as the seven teachings. These are the basis for the legal system, but sometimes are misunderstood in Western societies. He made reference to the two-row wampum – our two ships travelling together, side by side. *How would you undertake the journey forward? Where do we go?*

Professor Young expressed a utopian vision. Once you have a dream, in a decolonized approach, then you take action, even if it will take a great time. This is enough for an individual life. The two-row wampum was adopted by the Mi'kmaq at the great council fire. In some situations, the Court can support local communities in resolving disputes before they get to the Court level.

But if it gets to the court, a Judge is someone who counsels and corrects behaviour. It should not be a punitive model. For communities, justice is local -- the family members keep the laws and bring people back to proper conduct, but for a larger social group, broader laws and protocols are needed. The two perspectives must be seen and understood, to help counsel behaviour: justice as healing, to stop the behaviour, correct it, and ensure it is not repeated.

Professor Young gave another story to illustrate this. He was about to start working as community worker. Someone told him her story, and in repeating it, she was trying to understand it herself. A second story related to a single mother who needed assistance with her son, but no help was provided. The only intervention possible would be triggered by the need for 'protection.' She realized that she had to strike her son, call the RCMP and be charged, in order to access the necessary assistance. Why did it need to get to this? We can rely on the 8-pointed star to understand the underlying principles of relationship.

Christina Gray thanked Professor Young and referred back to one of his stories, which highlight the accountability that we have to our communities, and the principle of reciprocity. Recently, her mother reminded her that she was doing well with her work, but she needed to give back to her community. These are core indigenous principles: one must remain humble and not forget where one comes from.

Krista Robertson thanked Professor Young. She noted his image of judge as one who assists with alternate dispute resolution, as opposed to just the standard judicial review process. She asked him to consider the committee's current proposal to bring people who are knowledgeable of indigenous law to assist the court, which is remarkably open to different approaches. It can sit in the First Nation space, or invite an Elder to work with the Court. What would be appropriate, in terms of process, to identify an Elder to assist the Court? We are trying to develop a roster of Elders who might be available generally to assist with dispute resolution.

Professor Young said that you need to develop relationships, including about reciprocity. You need to know who is in the communities. Some are better than others for certain questions. Some are considered leaders, but have no knowledge. Others should not be approached. Some are very experienced and credible, but have no credentials. He learned much of his knowledge about plants and medicines from someone considered to be "the local drunk," who was taught by his grandmother. No-one had ever asked him – they only saw the superficial image. You need to know who has the most credibility within the community (not necessarily within the court). Another indigenous legal principle of note: the concept of shared liability. Many Mi'kmaq principles are shared privately within the family. When one family member does a wrong, the guilt is seen to be shared by the whole family. Similarly, success is shared by the family. When he graduated from UBC, and passed the bar, he received no calls of congratulations, but later learned that his family had received flowers from the band council to honour his success. There is

shared liability and shared success. This is important to work into dispute resolution processes for election disputes i.e., to involve the wider family.

Justice Lafrenière thanked Professor Young for his presentation.

3. Possible changes to the Federal Courts Rules or Practice? Use of Assessor Rule

Krista Robertson provided an overview of the three documents recently circulated to the Committee, which build on the draft discussion paper presented at the last meeting. For the first document, she contacted John Borrows, Aimée Craft, Brenda Gunn, Heidi Stark, and Scott Robertson to ask for suggestions for an advisory committee and then a list of Elders who could act as assessors (though this title might be re-framed to be more appropriate for the context). The second document provides draft terms of reference for the advisory committee, which would be a sub-Committee of the Liaison Committee. The third document is a draft invitation letter (and would probably have the draft discussion paper attached for background).

Justice Harrington noted the reference to Rule 52 and the suggestion of "primers" in the minutes of the previous meeting. He gave an example of a tribunal hearing in which someone from the Quebec coroner's office was asked to provide specialized knowledge regarding fires. The evidence given was so clear and straightforward that it could not be contested.

He referred to 'hot-tubbing' – a group of expert witnesses to be heard together – which was launched in Australia but adopted in Canada. He then gave an example from the on-going *Gotfriedson* case, in which there is a question regarding the number of day students. They have scholars to do research, long before examinations for discovery.

He noted that Rule 52 was quite different in the past. He gave an example of a collision case in which he acted. The lawyers agreed on the cause of the accident, but there was a challenging question regarding the cost of repair that was related to the weight of steel needed. It came before Justice Rothstein (then a trial judge), who said that he did not intend to investigate the weight of steel directly – instead, an assessor would be appointed. He asked for counsel jointly to choose and pay for an assessor, who would have free rein to investigate and prepare a report. They settled on the basis of his report, and were not involved in the work of the assessor (they had selected him, and both had a high regard for him).

This has also been done in property valuation – e.g., how much is the property worth on the open market? He had a case as a mediator regarding a lease for property, which was to be returned with only normal wear and tear, and the property was evaluated by an assessor. In maritime matters, it is normal to have such outside assistance.

He then referred to the *Porto Seguro* maritime law case. In maritime law, it had been common for a judge and assessor to proceed without any expert witnesses. However, the decision was overturned by the Supreme Court due to lack of transparency: the parties have a right to know what the assessor tells the Court.

As a lawyer, Justice Harrington did not rely on assessors, because it was never known what the assessor would actually do. He preferred to call his own expert witness. As a judge, he also prefers to focus on expert witnesses. Even if an assessor is hired, the person may just become a third expert. He added an alternative to formal reliance on the assessor Rule. Often, there is a pre-trial conference that can shift into a dispute resolution. At a recent conference, two papers were presented by J. Mandamin (aboriginal dispute resolution) and J. Harrington (commercial dispute resolution). Private dispute resolution can often be more effective than adjudication by the Court – you choose your own decision-maker, or 3 adjudicators (e.g., 1 by each party, who then jointly choose the 3rd). Maritime law is commercial and transactional. Emotions do not usually play a significant role. As a result, the maritime law experience

with the assessor may not be as helpful for Aboriginal law cases.

He closed by noting that if you call an expert on Indigenous law, you expect him to be advantageous to your case. For the Court to call an assessor, it could also prove useful.

Paul Anderson provided comments on Krista Robertson's paper. On the federal side, it would be necessary to consult within the Department before providing a formal response. He raised a question: how does it differ from the parties having a conversation regarding joint selection of an expert specialized in customary law, tradition, history, etc.? He also suggested that another area where you might consider the assessor role would be land valuation – i.e., you might need to clarify the traditional use of land.

Krista Robertson responded that there is a difference between the two rules (expert vs. assessor). The assessor is appointed by the Court and is considered to be more neutral. It is not clear they would be bound by the expert evidence rules. The proposed process would provide a group tailored to the area of indigenous law.

Robert Janes added that the government of Canada does not want to wade into an internal indigenous law issue e.g., the decision of Justice Barnes regarding standing in Pacific Northwest LNG facility. There was a high-level issue regarding the right to standing for the community, but also an internal issue related to the indigenous law as to whether a person held a leadership position. Justice Barnes, perhaps reluctant to wade into the indigenous legal question, addressed the case on other issues. However, there was a suggestion in his decision that the indigenous legal question was non-justiciable. The assessor could be called to speak to a mixed fact and law question, as an arm of the court, to help the court understand what is an alien legal framework. The legitimacy point is also important: the perception that you don't want non indigenous judges opining on indigenous law. It might be seen as an illegitimate interference in internal issues. The proposed use of the assessor rule would help the court to understand the governing legal issues and address the legitimacy problem. There is a difference between negotiation (in the heat of battle in an adversarial process) leading to selection of a common expert and the proposal here, where a proposed roster of elders is developed outside the adversarial process as a default resource to provide guidance to the court. There is a significant difference.

Paul Anderson thanked Krista Robertson and Robert Janes for their clarification regarding the type of instance where the court is trying to understand the foundation of the indigenous law that is material to a case. However, it is more challenging if the assessor is proposed to take on more of an adjudicative role.

On this last point, Robert Janes gave an example of an Ontario case where even the adjudicative role might be of interest to the Crown. In defence, both Ontario and federal government stated that there might be other claimants for part of the land in dispute. This depends on the way in which the First Nations relate to each other. This presents a procedural quagmire: how to move from the spectre of an issue to clear identification of proper parties. The message from the government: it is not for us to say how the First Nations are organized; we are interested only in the proper defence to the case. It would be appropriate, if this is really an internal matter, to get assistance regarding the First Nations ordering of their communities. Ultimately, the question of an assessor would need to be raised with the parties to determine whether it is appropriate in particular cases. This gives protection to all the parties to mitigate the concern raised.

Justice Lafrenière asked whether it is practical to have quarterly meetings for 2 hours to develop a roster that might only be used for isolated cases. If these issues do not arise often, it might be preferable to have a committee that a judge could go to for the purpose of finding an assessor for that particular case. This poses less of a burden on committee members, while still being of very direct assistance.

Chief Justice Crampton added that in national security field, it is very helpful to have a ready list of amici available, as disputes sometimes arise on short notice. The list of amici builds over time. Also, what would an assessor do that an expert / amicus would not do? There is a need for a clear understanding of

roles.

Julie Blackhawk asked: is the role of the assessor to contextualize Elders' evidence, but without directly giving evidence of indigenous laws?

Justice Lafrenière suggested that they could be called upon to provide a written opinion.

Robert Janes added that the Rule anticipates the assessor being asked specific questions. E.g., what is the governing law relating to succession? You could call this context, or applying the law. It all turns on what questions the assessor is asked to address.

Justice Lafrenière noted that in contrast to the national security context, which is quite focussed, the field of Aboriginal law is much broader, both conceptually and geographically. By the time an assessor is actually needed in one area, that person on the list may no longer be available. He suggests starting on a case by case basis and then building on this foundation.

Julie Blackhawk asked how we would identify a roster with the variance of First Nations across the country. Even for the Cree, there is a lot of variation from one region to the next.

Robert Janes agreed that Justice Lafrenière's suggestion may also be workable. The roster is not meant to be binding, but simply to provide a starting point. An improved list could be developed over time. We might add, in the Guidelines, a note to ask counsel to consider whether an assessor could be helpful. The assessor Rule might be unused simply because no one is aware of how it could be used.

Chief Justice Crampton agrees that there may be circumstances when an assessor could be helpful. Perhaps the proposal could be reviewed with the Court and then returned to the Committee.

Andrew Baumberg proposes, in parallel, a pilot for counsel to raise the possibility of an assessor with the presiding judge in an appropriate case (or cases).

Robert Janes noted that it is difficult to identify cases from the outside.

Sheldon Massie agrees with having an advisory committee.

Justice Lafrenière encouraged the Committee to move forward on this issue. At least we can create a sub-committee – this in turn might provoke further interest. It might be useful to indicate a maximum of 4 teleconferences of no more than two hours (rather than setting a default 2-hour meeting time).

Christina Gray suggests a regional approach to the list.

Committee decision: Agreement to move forward and then discuss further at next meeting.

Andrew Baumberg agreed to act as secretariat.

4. Triage of Aboriginal Law Disputes – is it working / can it be improved?

Justice Lafrenière indicated that we still see lawyers who do not identify Aboriginal law cases via a cover letter under the Practice Guidelines. Cases fall between the cracks. The Bar is encouraged to highlight this process.

Pronotory Milczynski sees many cases by self-represented litigants, who often won't be aware of the Practice Guidelines. Perhaps the lawyer representing the band / government could take the initiative to flag the case.

Action: Krista Robertson noted that she was to provide a cover letter / check-list and will provide an update in due course.

Andrew Baumberg added that he has fixed the web site links, but is open to further suggestions.

Robert Janes asked whether the Federal Court registry requires that a party file a check-list regarding case type.

Justice Lafrenière responded: no. Certain case-types (such as pharmaceutical patent actions) are

automatically case managed. There is no problem at the Registry level with these being identified and forwarded directly to the Court for case management.

Chief Justice Crampton added that someone needs to turn their mind to this at the time of filing. We need discussion with Manon Pitre (Registrar) and Justice Lafrenière to ensure an approach that will be effective throughout the Court.

Robert Janes indicated that although the Aboriginal law bar is seen as a specialist bar, in fact it is really quite general. Governance disputes are often brought by local, generalist counsel from small communities.

Andrew Baumberg suggests putting the checklist as a suggestion for the Rules Committee. If a checklist is integrated in other Courts' rules, then it may be seen as beneficial for the Federal Courts Rules as well. Then it will necessarily be seen by lawyers, even if they don't see a Practice Direction.

Action: Andrew Baumberg to refer the issue to the Rules Committee for consideration.

5. Band Governance Disputes: Creative use of costs to encourage or deter certain types of conduct / to promote settlement and deter frivolous proceedings and motions.

Justice Lafrenière referred to a bill of costs for $168K which was not published, because it was referred for taxation rather than being addressed directly within the Court decision. See: 2013 FC 180; *Roseau River Anishinabe First Nation v. Nelson*. It might be a good thing for the judge to address costs in the reasons rather than referring it to taxation. This would provide more transparency on the costs issue.

Paul Anderson is still consulting within the Department – *for discussion at the next meeting*.

Krista Robertson noted that in the Guidelines, we have expanded the section regarding costs. Ideally, it will gradually ripple through the bar.

6. Long-term Committee Agenda

Robert Janes has not yet canvassed the overall executive. Two key issues are proposed in the interim:

- **scope and cost of aboriginal litigation -** Finding techniques to manage, in a fair way, the scope and cost of Aboriginal litigation – the discovery rules, including the means by which evidence is taken, are designed for more conventional disputes with smaller lists of documents, more defined issues, and smaller numbers of parties; many disputes are unwieldy and 'unlitigatable' (many disputes are not even attempted for this reason); the existing procedural framework is entirely ill-suited for these matters; if there is any mandate for this Committee, it is the problem to get these cases into a manageable state; some of the costs incurred are astounding, possibly for no good reason;
- **framework for receiving oral history evidence –** the second proposal is a more focussed issue: creating a framework for receiving oral history evidence; by analogy, years ago there were no clear rules for receiving expert evidence, so courts improvised and then rules were developed; we don't want fights over how oral history is received; the *Tsilhqot'in* decision in B.C. addresses how to qualify the person (but there are no rules to ensure that this is followed); there are other issues, including discovery of oral history, giving witness statements, and whether the person is subject to cross-examination; in some cases, a proposition is adduced that if the person is a member of the class, they need to be available for cross-examination; also, how do we guide early management of oral history evidence in the courts? either by direction from judges, or Rules?; we need to develop a checklist for the case management judge, as well as to help the court and parties regarding how oral

history will be managed; although there have not been dozens of cases with oral history, many more are expected;

Chief Justice Crampton asked if the Aboriginal law bar is using the new proportionality guidelines. Although developed initially in the intellectual property context, they were extended throughout all types of proceedings.

Robert Janes said that it is difficult to use them. Many issues are murky. When should you call oral evidence, how, etc.? The law is all over the map. Counsel are criticized for not calling oral history evidence (e.g., suggestion that a negative inference should be drawn), but it is unknown how the courts will deal with it. In some cases, the court says that the written record is clearly sufficient, whereas in other similar cases the court will instead focus on the lack of oral history. The higher courts encourage a comprehensive record. Almost every single attempt to limit the record and proceed in a summary fashion has 50-50% chance of bitter consequences – counsel loses considerable ground. He therefore advocates for more guidelines / checklists that provide real assistance. We should be looking at the specifics of how these play out so that lawyers who are starting a case can follow a clear procedure, rather than flailing about trying to make it up case by case. In this context, proportionality rules are risky. The only real imposition of proportionality is the limited means of the parties.

Justice Lafrenière noted that the court is also struggling with the proportionality issue. He added that trial management guidelines have also been published. Why have a year-long trial for which the legal fees are greater than the value of the outcome? Surely we can bring these cases to a size commensurate with the issues in play for the parties.

Robert Janes added that often the case-management judge is pushed in different directions, with counsel bringing competing case-law even on procedural issues. For the oral history context, it would be useful to have a checklist of matters that any case-management judge should raise around oral history. E.g., is it expected that oral history will be called? Will this lead to any practical concerns that the court should be made aware of, such as special protocols around presentation of the evidence? Also, questions related to gathering and management of oral history evidence, disclosure, depositions.

Justice Lafrenière acknowledged the importance of the issues raised. If there is a checklist that the Bar would like the court to consider, please propose one for consideration at the next meeting. In his experience, these are items that are routinely covered by the case management judge, but suggestions are welcome.

Action: Robert Janes to provide a case management check-list.

Chief Justice Crampton encouraged the committee to develop a concrete strategic plan for its work. Creating space for indigenous law should be one important priority; another relates to how the Court might contribute towards the broader objective of reconciliation set forth in the TRC Report; procedural issues that might arise within individual court proceedings could be another item.

In terms of appointments, the Chief Justice noted Justice Ahmed's recent appointment. He added that there are few applicants from the Aboriginal law bar, and for the few applicants, there is also interest from other courts. Candidates should be leading members of the bar, and must realize that they must let go of their activist/advocacy perspective – some have indicated that they are not ready to do so, and so do not apply.

Justice Lafrenière reiterated the request for input on the long-term agenda by early 2018, for discussion at the next meeting.

7. Varia

Justice Shore suggested that the court create an archive of oral history for electronic access.

a) Discontinuance in *AGC v. Huu-ay-aht First Nations*, A-17-17.
No comments.

b) Informal requests for interlocutory relief.
The Chief Justice noted the court's efforts to pursue a number of initiatives to become more flexible. Justice Lafrenière noted that there were local practices, but this has now been standardized across the court.

c) Scheduling.
No comments.

d) Trial management guidelines.
Justice Lafrenière noted that these are applicable to all proceedings. They are meant to manage trials more efficiently. The Court is open to assigning a trial judge and set a trial date early in the proceeding, but parties must be willing to work within this schedule. The trial judge can then work with parties.

e) Court modernization
Andrew Baumberg noted that a multi-year Aboriginal law trial was recently conducted before Justice Mandamin in *Alderville*. Similarly, a shorter (but still lengthy) Aboriginal law trial was held before Justice Zinn in *Southwind*. The use of an electronic system for evidence display / management resulted in a much more efficient trial process, allowing for simplified management, staging, and presentation of high-volume evidence. The large screens also allowed for magnification of historic documents to improve legibility. Parties who are interested in holding any upcoming hearings / trials via an e-court system should raise this in their case management or pre-trial conference (or simply write to the Court if the matter is not under case management).
Chief Justice Crampton added that the *Southwind* trial was initially scheduled for 100 days but finished in 70 days. He encouraged counsel to consider this and contact counsel in the *Alderville* or *Southwind* cases, or A. Baumberg, for further info.

f) **Court File Retention schedule: *practical requirements for practitioners***
No comments.

g) Judicial appointment to the Court: Invitation to Apply
Discussed earlier.

h) Spring 2018 Meeting
The CBA Spring conference is June 7-8, 2018 (Whitehorse, YK). The proposed date for the next meeting is June 6.

Justice Lafrenière added that there will be a further exchange regarding the proposed roster.

***** Meeting closed. *****