

MINUTES of IP Users Committee Meeting #1
Ottawa, Ontario
May 7, 2008

In attendance: Chief Justice Lutfy, Justices Hughes, Harrington, Zinn, Prothonotary Tabib, Francois Guay, Peter Wilcox, John Cotter, Chris van Barr, Angela Furlanetto, Richard Naiberg, Valerie Jean-Gilles, Christina Schwarz

Brief opening remarks were given by the Chief Justice followed by an introduction to the IP Users Committee and its goals by Justice Hughes. A more detailed discussion followed with the remarks as noted made by some of the participants:

Flexibility with scheduling matters

- Some counsel have had experiences where the Court seems to be implementing schedules and pushing cases to trial quickly contrary to the wishes of both parties
- Other counsel have had experiences where their cases are moving too slowly
- Generally there is agreement that it was much easier and faster to have motions heard before case management was implemented – but that case management is a positive development
- Overall, counsel are happy with case management and agree that flexibility in scheduling is necessary
- Generally, the Court has been responsive to the parties' requests

Early Trial Dates

- There is some concern among practitioners who represent small companies that these clients are not able to move as quickly as the Court would like – and they do not have the resources to prepare for trial quickly
- A general movement toward early trial dates will change the way that law is practiced in Canada. Unlike the US, many IP practitioners work in smaller firms and do not have the capability to handle matters with very short time lines, nor can they charge the prices that the US firms to
- There is general agreement that the Court should strive for trial dates within 2 to 3 years from the time actions are initiated
- Flexibility is important
- The Chief Justice offered to personally assist parties if they are having particular difficulty in obtaining trial dates within a reasonable time
- If parties wish an early trial date, they should request one early in the process at a case management conference – but they must then conform with the schedule imposed

Discoveries

- General agreement that discoveries are out of control

- Of particular concern is the length of time that it takes to complete discoveries, especially because each round of discoveries requires time to complete undertakings, refusals motions, appeals, etc.
- Considerable support for considering different means of dealing with difficult discoveries:
 - Real-time discoveries, such as those used by Master Beaudoin of the Ontario Court. He makes himself available by telephone during discoveries.
 - Time limits on discoveries, such as the US 7.5 hour time limit on depositions. Imposing time limits may be ineffective as counsel will find a way around them
 - The parties may hire an independent neutral party to rule on refusals during discoveries, with some sort of appeal process to the Prothonotaries
 - It may be useful to provide the party to be examined in advance with a list of issues that will be addressed during the discovery, to ensure that they are prepared to provide an appropriate representative with knowledge of those matters or make such knowledge available
 - Counsel do not agree that the Court should make compliance with Rule 95 mandatory.

General Comments

- These meetings are useful
- The Court appreciates comments and suggestions and will aim to implement them by way of pilot projects

Next meeting

- Toronto, Thursday October 30, 2008 at 2pm
- Counsel should come prepared with suggestions and recommendations, after having consulted with others in the IP Bar

TO DO:

Collect and implement comments as to Case Management
 Collect and determine how to implement improvements to discovery
 Determine how best to communicate amongst ourselves and the bar and public
 Receive and consider concerns raised by the bar