

**FEDERAL COURT BENCH AND BAR
LIAISON COMMITTEE
(IMMIGRATION & REFUGEE LAW)**

DRAFT MINUTES OF MEETING

FRIDAY, APRIL 15, 2005 AT 4:00 P.M.

HELD AT THE BANFF SPRINGS HOTEL

In attendance:

Chief Justice Lutfy
Ms. Danson
Ms. Wcislo
Mr. Lunney
Ms. Weafer
Ms. Thompson
Mr. Waldman
Ms. Taylor
Mr. Pepin
Mr. Matas
Ms. Daley
Mr. Maynard

Recording Secretary:

Nancy Gagné, Senior Registry Officer, Courts Administration Service, Calgary
on behalf of Andrew Baumberg, Executive Officer, Federal Court

1. Opening Remarks

Chief Justice Lutfy welcomed the participants at this follow-up to the October 6, 2004 meeting by telephone between the Federal Court and members of the immigration and refugee law bar.

The Chief Justice indicated that, from his point of view, the direction of this meeting would be to build on the discussions of the October 6th meeting and perhaps give more structure to the group adding that this group is doing the same thing as the Aboriginal Law section of the Canadian Bar Association (CBA).

The Chief Justice spoke on beginning a dialogue with the practitioners of Aboriginal law both from the government side and from the private sector. He noted that it has been and is a growing part of the participants workload.

Ms. Danson spoke on the discussion points prepared by herself and Ms. Wcislo. The discussion points suggested some new initiatives for the immigration practitioners within the Federal Court and invited feedback from the participants on these discussion points.

2. Creation of a Liaison Committee

Chief Justice Lutfy indicated that he would welcome a broader group and invited each participant to comment on the composition of the committee.

Ms. Danson expressed a very deep interest in the establishment of this type of committee because the immigration practices before the Federal Court are quite extensive and take a major amount of the Court's time.

She went on to say that other generic or general committees such as the Rules Committee do not provide the same opportunity to go into the same depth on the immigration issues that this committee could offer the participants. She added that if this committee does go forward, hopefully, it would be looked upon as an adjunct not as a replacement for any other existing committee.

Chief Justice Lutfy responded to Ms. Danson's comments indicating that the Court shared her views and that even though there are other fora, there is support from his colleagues that there should be a focus group for immigration and refugee matters.

The Chief Justice complemented Ms. Danson's comment on the amount of the time the Court devoted to immigration and refugee law by noting that approximately 35% of the Court's resources are spent on immigration and refugee law and that it is work of which the Court is very proud.

Ms. Wcislo commented that the Department of Justice (DOJ), as a national law firm, was quite excited about the possibility of this committee in whatever form it ultimately took indicating there were a number of reasons for feeling this way such as:

- 1) the immigration practice is the only practice she knew of that had its own set of rules that govern much of the procedure (Federal Court Immigration and Protection Rules);
- 2) DOJ had representation on the Statutory Rules Committee as well as on the Federal Court Bench and Bar Committee and that members of those committees sometimes had to grapple with immigration and refugee law issues and that it must be a challenge to those who do not deal with immigration law on a daily basis.

Ms. Wcislo commented that other informal groups such as Intellectual Property law and Admiralty law have similar committees. She indicated that perhaps it is time to establish a similar group which would bring immigration practitioners from the private sector and government as well as members of the Court together to discuss issues.

She noted that both Ms. Danson and herself wanted to err on the side of a more inclusive rather than narrower group – and therefore to include the IRB. Although it did not appear as a litigant, it had a very key administrative and practical role to play in that it is responsible for the creation and forwarding of the certified tribunal record, the document upon which most of the judicial reviews are argued by the parties. The Board could be included in discussions of changes that might touch on its obligations and responsibilities.

Ms. Daley commented on the incredible interface between the IRB and the Court. The production of the record, the operational, administrative issues, the issue of statistics and workload once the court had issued its judgment and indicated that the IRB would like to be part of those discussions.

She spoke on the digital, technological age and some of the benefits such as e-filing that the IRB could bring to the committee.

Mr. Waldman indicated that a committee of this type was long overdue and that there should be the option of inviting the IRB if the agenda warranted the Board's participation.

Mr. Maynard concurred with Mr. Waldman

Mr. Matas concurred that the current structure be maintained with the option of inviting the IRB when necessary. Participation of the Federal Court of Appeal was also mentioned.

Chief Justice Lutfy invited comments on the most cost-effective way for the group to meet adding that teleconferences are one way but the in-person meetings should be discussed. He suggested that perhaps the meeting could be held on the day prior or after a general meeting between the Federal Court, the Federal Court of Appeal and the CBA.

Ms. Thompson indicated that there would not be regional representation of the DOJ at these general meetings. She went on to say that this committee would have the most representation from the private bar and the DOJ.

Ms. Weislo indicated that this was an important point because the volume of litigation varies from city to city, the pressures and concerns differ in Toronto than in Montreal.

Chief Justice Lutfy noted that the CBA annual meeting may be the most cost-effective forum to have the in-person meeting of this committee.

3. Federal Court Immigration and Refugee Protection Rules

Chief Justice Lutfy advised the group that it was going to be recommended to the Rules Committee at their next meeting on April 29, 2005 that sub-paragraph 2 of Rule 5 be deleted. He went on to say that the Court thinks it is important to have a respondent named other than the Attorney General.

Ms. Taylor noted a number of reservations about the deletion of this sub-paragraph. She indicated that it is important to maintain Rule 5(2) because it is historical in part and logistical in part.

Historically, Rule 5(2) was created to curb the problems of motions to amend the style of cause to name the proper respondent and the difficulties for service. Logistically because in the Regional Offices, files are based on the named respondent so service is facilitated.

If Rule 5(2) is deleted, it would cause administrative headaches and that is why she would like to see either the Minister of Citizenship and Immigration or the Minister of Public Safety and Emergency Preparedness the named respondent as opposed to the Attorney General for Canada.

Ms. Taylor also raised the question of whether the deletion of Rule 5(2) would change the dynamic of stay of removal orders.

Mr. Waldman concurred with Ms. Taylor. He indicated that without Rule 5(2), the respondent named would automatically be the Attorney General for Canada. He suggested that the Rule could read “in cases of judicial reviews, the respondent shall be the Minister of Citizenship and Immigration except in cases of judicial reviews which involve removal orders”. This would avoid the wording “and/or”.

Chief Justice Lutfy suggested that either the deletion be accepted or to come up with very simple legislative language, and submit it to either the secretary of the Rules Committee or to Mr. Baumberg.

4. Leave Process

Chief Justice Lutfy indicated that probably the focus of the pilot project would be only in Toronto. As well, the focus would probably be counsel that could commit to a hearing at the last moment. He added that for administrative simplicity, the proposed leave process would be applied only to new files.

5. Varia

Chief Justice Lutfy noted that he had read Justice Gibson’s order on class applications. He invited Mr. Lunney and Mr. Maynard to respond with projected numbers of files and time frames.

Mr. Lunney and Mr. Maynard indicated that there are thousands of files ready for refusal but have not been refused due to the injunction. An estimated inventory was 100,000 but it was felt that 5,000 refusals could generate approximately 500 judicial reviews.

Chief Justice Lutfy indicated that the next meeting should be by teleconference in either October or November and that Mr. Baumberg, in consultation with Ms. Danson and Ms. Weislo, would finalize the arrangements.

Ms. Thompson noted that this year the CBA meeting has planned a terrific immigration program.

6. Closing remarks

In closing, **Chief Justice Lutfy** spoke on the composition of the committee being representative of Quebec and Francophones. He also indicated that he is open to the participation of the Federal Court of Appeal. Chief Justice Lutfy thanked everyone for their participation.