

COURT OF APPEAL BENCH / BAR LIAISON COMMITTEE MEETING

By Skype Conference

MEETING – Meeting held Thursday, May 28, 2020 at 3:00 p.m.

MINUTES

PRESENT:

Chief Justice Wood (Co-Chair)
Justice Beveridge
Justice Farrar
Justice Bourgeois
Peter McVey, Q.C. (Co-Chair)
Paula Arab, Q.C.
Mark Scott, Q.C.
Michelle Awad, Q.C.
Roger Burrill
Paul Adams
Peter Planetta
Lori Ward
Scott Campbell
Caroline McInnes
Sarah Frame, Cowan Intern

REGRETS:

None

A meeting of the Court of Appeal Liaison Committee was held on the afternoon of Thursday, May 28, 2020 at 3:00 PM.

1. Cowan Intern

Chief Justice Wood welcomed Sarah Frame to the meeting. Ms. Frame is the Cowan Intern for the Nova Scotia Court of Appeal. The project for the Cowan Intern this summer is on Access to Justice. Ms. Frame will be listening in on the call. Chief Justice Wood assured committee members that nothing they say in the meeting will appear in her report without going through the Chief Justice and without contacting the person directly.

Chief Justice Wood invited Ms. Frame to speak about her project briefly. Ms. Frame explained that the project this summer was on access to justice, and that she was conducting a review of the Civil Procedure Rules relating to appeals with this lens, as well as looking at the Rules of other appeal courts across the country to see what they might be doing in these areas. She noted that she had two reasons for participating in today's call: (1) she is interested in improving / promoting the use of technology at the court, and (2) she is interesting in hearing about the possible implementation of a *pro bono* inmate appeal project. Ms. Frame advised committee

members that they could reach her at SFrame@judicom.ca if her project speaks to them or if they want to get in touch.

2. Agenda

Chief Justice Wood reviewed the new agenda items for the meeting:

- a) Courts' Recovery Committee (Justice Farrar)
- b) Feedback on Suspension of Deadlines (CJ Wood)
- c) Copying of lower court files / exhibits (Ms. McInnes)
- d) *Pro Bono* Prisoner's appeal program (Mr. Hughes' letter)
- e) Removing urgent/essential threshold for chambers matters (CJ Wood)
- f) Other business

3. Approval of minutes

The minutes of this Committee's last meeting (May 7, 2020) were approved with two changes:

1. On page 2, 3rd paragraph, the third sentence should read: "Parties were allowed to make submissions if they wished to have their matter proceed in person."
2. On page 4, the first paragraph of Paula Arab, Q.C.'s comments were corrected as follows: the reference to "three matters were scheduled" is changed to "two matters were scheduled"; and the reference to "Two were moved to the Fall" was changed to "One was moved to the Fall". Lastly, the reference to "The third matter involves" is changed to "One matter involved".

4. Business Arising from the Minutes

Mr. McVey spoke to the action items from the last meeting as follows:

- Chief Justice Wood prepared a FAQ document which has now been posted on the Court's website
- Scott Campbell (Stewart McKelvey) has been newly appointed to the committee and is present on today's call. Welcome Mr. Campbell.
- Mr. McVey will follow up after today's meeting to ensure amended minutes replace the ones the NSBS may have posted online.

5. New Business

a) Courts' Recovery Committee (Justice Farrar)

Justice Farrar reported that he is the Court of Appeal representative on the courts' Recovery Committee. This Committee will develop occupational health and safety guidelines for the return

to business at the courts. The date of June 1 was originally planned for the courts' reopening, but that date has been pushed back to June 15.

The Committee has completed an assessment of all the courts in the Province to determine what courtrooms can be used with the required social distancing protocols. The Committee has designated the courtrooms as either tier 1, 2 or 3. Tier 1 courtrooms are considered big enough to have hearings; tier 2 courtrooms are those that may be used with minor modifications; and tier 3 courtrooms are those that cannot be used as they are not big enough.

Justice Farrar advised that the Committee will develop guidelines and protocols in consultation with numerous stakeholders. Further, the Committee is taking steps to make sure that the courts will have the necessary personal protective equipment resources that may be required by the guidelines and protocols (e.g. masks, sanitizers).

Justice Farrar reported that along with Justice Derrick and Julianne Stevenson (Court of Appeal Law Clerk), they will develop Court of Appeal specific protocols. He anticipates they will have preliminary drafts by the end of tomorrow for the Court's review, and will hope to get drafts out to interested parties well before they will come into effect.

b) Feedback on Suspension of Deadlines (CJ Wood)

Chief Justice Wood referred to the current directive that has suspended Rule based deadlines until June 26. He asked Committee members if they wanted the suspension to continue.

Mr. McVey reported that he has heard no concerns raised from the Department of Justice lawyers he canvassed.

Mr. Scott stated that as long as the Court is satisfied, notices of appeal may be served on the Crown by email. Further, he mentioned that the Crown has filed a few motions for directions to keep some prisoner's appeals (with legal aid at the early stages) on track. Chief Justice Wood responded that the Court has no difficulty with this approach to service as long as the Registrar is notified.

Chief Justice Wood advised that the Court will send letters out to parties with their new deadlines for filing motions for date and directions once the suspension ends.

c) Copying of lower court files / exhibits (Ms. McInnes)

Ms. McInnes provided an update on the process counsel can follow to obtain copies of lower court files and exhibits for the purpose of preparing an appeal book. During this pandemic, the Court has not allowed people to attend the courthouse to view files or make copies of documents or exhibits. Starting June 1, this will change. The court will be allowing parties to make an appointment to make copies. A new space has been established for this purpose to allow for social distancing. Appointments will be appropriately spaced to allow time for cleaning.

Ms. McInnes advised that parties can contact her to make an appointment, and she will pass along to the appropriate staff person.

Mr. McVey asked if the process for bringing files up from lower courts was still working during the pandemic. Ms. McInnes advised that it was, but if he had a question about a particular file to contact her and she could check on its status.

d) *Pro Bono Prisoner's appeal program (Mr. Hughes' letter)*

Chief Justice Wood referred to Mr. Hughes' letter, received earlier today and circulated to Committee members not long before today's meeting. He asked for thoughts on the letter's proposal.

Mr. Scott reported that he spoke with Mr. Hughes for about 30 minutes this morning. He noted that there is still a need for prisoner's to have increased access to justice and it is always desired to have someone champion the cause. There is no greater strain on the court than a self-represented prisoner and, from the Crown's perspective, this sounds like a great idea.

Justice Beveridge commented that this would be a wonderful way to increase access to justice and if it can be accommodated in Nova Scotia it would be a real asset.

Mr. Burrill stated that he knows a bit about the Ontario program. There are a lot of issues in terms of assignment of counsel and as he understands it some remuneration is provided by legal aid in Ontario. This may be something that Mr. Hughes and NSLA need to discuss before this can be set up in Nova Scotia.

Ms. Awad commented that she heard a presentation about the Ontario program a few years ago and understands there is a fundraising component in addition to funding from legal aid. For example, The Advocates' Society has fundraised with a "donate your rate" campaign. It may be that more fact-gathering is required before embarking on the program.

Chief Justice Wood advised that he would respond to Mr. Hughes by letter, stating that this sounds like it would be a good project and that this Committee will be interested in knowing more about it. Mr. Burrill or NSLA will reach out to Mr. Hughes to have discussions about the program before the Committee becomes more formally involved.

Mr. Burrill confirmed he would reach out to Mr. Hughes.

Mr. Scott advised he could get input from his counterparts in Ontario.

e) *Removing urgent/essential threshold for chambers matters (CJ Wood)*

Chief Justice Wood asked if the Court should lift the urgent / essential restrictions on chambers matters.

Ms. Awad commented that she thinks it's time. She noted that she participated in a contested Supreme Court telechambers matter this week and that it went very smoothly. The chambers experience felt very much the same as it would apart from the lack of visual.

Chief Justice Wood advised that the Court would discuss lifting these restrictions, but understands that from the Bar's perspective this would be a good idea.

f) *Other business*

None raised. Mr. McVey reported that he had not received many inquiries from the Bar.

4. Next Meeting

The next meeting of this Committee will be set at a later date, likely for mid-June. Chief Justice Wood advised that he would ensure the Committee has sufficient time to review the draft E-Filing Protocol.

Respectfully submitted,

Caroline McInnes