

**MINUTES of the Bench & Bar Committee**  
of the Canadian International Trade Tribunal  
held December 8, 2011

**Attendance:** Leach, S.; Vincent, D.; Fréchette, S.; Ritcey, R.; Heggart, R.; Walker, R.; Cheng, R.; Tyler, D.; Kanargelidis, G.; Flavell, M.; Somers, G.; Gibb, A.; Clarke, S.; McLeod, I.; Clark, P.; Laporte, D.; Burnett, G.

The meeting was co-chaired by R. Cheng (Canadian Bar Association) and S. Leach (Chair of the Canadian International Trade Tribunal).

**Item 1: Introduction of new Chairperson – Canadian International Trade Tribunal**

Mr. Stephen Leach was introduced as the new Chairperson of the Canadian International Trade Tribunal. He was appointed in October, 2011 and spoke to his previous work experience and history. Mr. Ron Cheng, on behalf of the CBA welcomed Mr. Leach to the Tribunal.

**Item 2: Expert Reports**

A CBA representative spoke to the challenges faced with expert reports. Different mandates allow for different filing deadlines; on SIMA cases it was contended that there can be an absence of a substantive report addressing areas of testimony. It was suggested that with the on-going Rules review, consideration could be given to amending the Rules to direct parties to provide specific materials in advance so counsel can better prepare for hearings; material such as recent publications and press releases respecting expert witnesses. The Tribunal advised that on a recent SIMA case a new approach had been adopted where the expert report was provided to counsel well before the hearing. The CBA representative also suggested that both parties be mindful of how long expert testimony can take during a hearing and to take this into consideration when preparing for cross-examination and hearing scheduling.

**Item 3: Remands**

A CBA representative advised that it would be useful to have a timeline for Tribunal proceedings upon receipt of a remand decision from the Federal Court. CBA members can provide no direction to their clients as to next steps when a file is remanded to the Tribunal, as there are no specific timelines or guidelines on how the Tribunal proceeds with these matters. The Tribunal responded that it would be difficult to issue a guideline as each case is different – some require a full re-hearing, others can be disposed of by following a particular Federal Court direction. Generally, the Tribunal tries to take a decision on any remand within the same timeframe as was applicable to the original file. It was proposed that shortly after receipt of a remand, the Tribunal could organize a conference call with the parties to discuss the timing of the necessary next steps.

**Item 4: USB keys**

A Tribunal representative spoke of the June 2010 Tribunal decision to distribute the SIMA administrative records electronically on an encrypted USB key. A question was posed as to whether there will instead be a Web interface in the future. The Tribunal indicated that it hopes to offer such a feature eventually but that security, bandwidth and costs need to be considered. The CBA offered that most of its members already have a suitable interface in place and that an information session on the applications currently being used in private-sector law firms might be a useful exercise. The CBA was reminded that all USB keys are to be returned to the Tribunal in accordance with the new form of Undertaking.

**Item 5: Review of CITT Rules**

A Tribunal representative announced that the Rules of general application, appeals and procurement have been reviewed and commented on by stakeholders. It is hoped that in the new year a meeting can be held between members of the Bar and the Tribunal for a final review. The CBA requested adequate time to review and comment. This final draft will be prepared for the review of Tribunal Members. The CBA was advised that the rules review applicable to SIMA will proceed at a later time.

**Item 6: Changes to Staff Reports**

A Tribunal representative announced that a pilot project has been undertaken to streamline the format of the Tribunal's Pre-hearing Staff Report. Rather than providing schedules for each company in the staff report, only consolidated information will be presented (individual replies to questionnaires are still available on the record). Related, but not directly relevant information, such as exchange rates, will also be on the record but not included in the Staff Report. Members of the CBA expressed concern that this would increase the time it would take for them to prepare for a hearing, as they would now have to refer to multiple volumes to gather required information. The Tribunal representative responded that the purpose of the pilot project is an effort to be more efficient and cost-effective. Consideration may be given to reorganizing the record to facilitate retrieval of information. Before the issuance of the next Staff Report, the views of all affected will be sought and the initiative improved upon, if possible. The Tribunal queried as to whether some schedules are not necessary at all. This item is to be added to the next agenda for further discussion.

**Item 7: Hearings – Time Management**

A Tribunal representative advised that the Tribunal is also looking for ways to better manage hearings, i.e., seeking time efficiencies and looking to avoid repetition between written materials and oral testimony. Pre-hearing teleconferences have been proposed so that pre-hearing matters can be more readily identified and the Tribunal can better inform parties as to the information it is seeking, in effect setting out the architecture of the hearing in advance. The CBA noted that the timing of any pre-hearing teleconference needs to be carefully considered; if it is too close to the hearing it may not be of benefit to counsel or the Tribunal. A related query was raised as to why the Tribunal had ended its practice of consulting with counsel on draft questionnaires. It was explained that this practice was still in place in most cases, particularly injury inquiries.

**Item 8: Client Satisfaction Survey**

A Tribunal representative announced that a client satisfaction survey is to be conducted during the first two months of 2012. Ekos Research Associates has been engaged to administer the survey and report its findings. The report will be made public on the Tribunal's Web site. Clarification was requested by the CBA: does "client" mean CBA members or their clients. It was explained that it was the latter (as well as self-represented parties and parties represented by non-lawyer counsel), and that CBA members will possibly be canvassed as well.