

Meeting with the Montreal Bar, May 15

(notes by D. Stratas)

Chantelle Bowers

Chantelle Bowers gave an interesting and comprehensive explanation of how Rules get enacted. All of this was a precursor to Justice Gauthier's discussion of the activities of our subcommittee.

We fit in as a policy review body reporting to the Rules Committee. The Rules Committee will then consider our report and perhaps decide to make some Rules reform.

Justice Gauthier

Justice Gauthier gave an excellent speech that summarized the activities of the subcommittee. She reviewed some of the issues we are considering, highlighting some of the more important points. She did a great job communicating what we are doing and encouraging people to offer comments to us. In her words, the train is leaving the station on this initiative, and any comments should be made very soon.

Prothonotary Morneau

Following Justice Gauthier's speech, Prothonotary Morneau offered some of his own personal views. He agreed with our approach of seeing proportionality as an umbrella issue that covered or linked the first four issues in our discussion paper.

He suggested that in the area of maritime law, the abuses are rare. The lawyers are on a tight leash with the insurance companies that pay them, and so there are not a lot of unnecessary resources expended. There is no need to hold tight reins over the maritime bar.

However, the situation is different in IP. He recounted a recent file in which he was faced with over 1,000 refused questions arising from 16 days of discovery. He mused about whether discovery plans and mandatory timetables might be a way to go.

He expressed concern that, in his words, there are not enough tools in the tool box for Prothonotaries to manage proceedings and deal with abuses. Some tools are lacking when dealing with self-represented parties. What does one do when suddenly a self-represented litigant, who has some ability to format materials properly (so they cannot be rejected at the desk), starts ten proceedings and brings five motions in each one? He noted that the rules do not currently contain a provision permitting the Court to redress abuses by limiting the number of procedures that can be brought.

There are some self-represented litigants that are trying to use the procedures properly and an “abuse of process” rule like art. 54.1 in Quebec is not for them. It is for the sort of people discussed in the previous paragraph.

He concluded his remarks by stressing the need for a provision to deal with abuses, and he applauded enthusiastically the idea of a proportionality provision.

Questions and comments

The first questioner asked about technologies and e-filing. Chantelle Bowers briefly explained the activities of the technology subcommittee. Several others chipped in to discuss some of the limitations and impediments we face in becoming a more electronic court.

There was a question about the deadline for submitting comments to our subcommittee. Justice Gauthier explained that the formal deadline (in February) had already passed, but that people can still offer views, even on an individual basis. She suggested that the ultimate cut off date would be around July. (I happen to agree with that.)

A lawyer at Norton Rose raised the issue of costs as a sanction for bad behaviour. He noted that the Tariff specifies very low levels of costs. What’s \$10,000 to a pharmaceutical company? The thrust of the questioner’s comments was that one tool to curb abuses is the imposition of very high levels of costs, to create disincentives for bad behaviour. Justice Gauthier agreed that this was an issue that our subcommittee is looking at. She suggested that there were two countervailing considerations: the need to make our rules uniform for all, allowing access to the courts for all vs. controlling abuses.

After the meeting, one person suggested to Justice Gauthier and I that if we try to simply the rules for self-represented litigants, we must be careful not to create imprecision.