

From: Morrissey, John [jrmorrissey@smart-biggar.ca]

Sent: September 7, 2012 11:30 PM

To: Stratas, David W Hon.

Subject: Subcomm update & ext'n of time

Dear Justice Stratas,

I am writing only to you in order that this note might be placed on the website.

In the light of the email below and Rob MacKinnon's input, my comments regarding Recommendation 10 (vexatious litigants) are:

- 1 I suggest that we make the recommendation, modified as proposed below, because our job, in my view, is to recommend and not to defer the issue.
- 2 CAS is too close to the court to appear to be neutral on the issue of a vexatious litigant. More distance is needed to increase the reality and fact of objectivity. It does not "look good" if court clerks can "bounce" a litigant by getting a proceeding commenced against that litigant. Clerks might threaten nuisance litigants with such orders. We do not know what really "goes on" at street level in the Registry. We need an independent intermediary to bring the application (viz., the AG Canada) to ensure objectivity and judgment uncluttered by having to deal frequently with a nuisance litigant who is usually unrepresented and may be offensive to the staff of the Registry.
- 3 Here is a reworded recommendation designed to try to find a consensus amongst all of us.

Section 40 of the Federal Courts Act should be amended to permit the Attorney General of Canada to apply to the court for an order declaring a person to be a vexatious litigant. Section 40 should be further amended to permit the Attorney General to bring such an application based upon evidence provided by the Chief Administrator of the Courts Administration Service including evidence submitted by the Registry of either the Federal Court or the Federal Court of Appeal, or both. The Subcommittee recognizes that this recommendation may be controversial and welcomes the advice of the Attorney General, the Federal Court Bench and Bar Committee and others with respect to the recommendation.

John

From: Stratas, David W Hon. [mailto:David.Stratas@fca-caf.ca]
Sent: Thursday, September 06, 2012 10:19 AM
To: Bowers, Chantelle; Baumberg, Andrew; Gauthier, J. Hon.; Denis.Ferland@fd.ulaval.ca; Hughes, Roger; phutchins@hutchinslegal.ca; romackin@justice.gc.ca; Morrissey, John; Rennie, Donald; Stratas, David W Hon.; cstrickland@smss.com; Tabib, Mireille; jwalker@yorku.ca
Subject: Subcomm update & ext'n of time
Importance: High

Hello colleagues!

Thanks to everyone who has submitted complete or partial comments so far. I have posted the complete comments in the resource center on the web.

Some submitted partial comments privately to me, and asked if they could have more time. In looking at our schedule, the possibility that we might still have matters to discuss, and mindful of our need to get the report to the translators, I think we can extend the deadline for initial comments to close of business Monday. Does anyone think they will need more time?

So far, I see three things in the comments received (both complete and partial):

- (1) Corrections to wording, grammar, typos.
- (2) Some substantive suggestions, supplementing the analysis in support of some recommendations. For the most part, these are not particularly controversial - they are things that we did discuss and upon which we seemed to have reached a consensus. Absent further comment, I think we can provisionally implement these. You can consider them when you see the next draft of the report, along with a blacklined version showing you the proposed changes.
- (3) Good consensus on almost all recommendations.

Concerning (3), one notable exception is the recommendation on how to deal with vexatious litigants. Speaking for myself, I found Rob MacKinnon's comments on this section (see his lengthy comment in "track changes" on page 26) to have considerable merit, and I am attracted to his proposal that the matter be raised in the Bench and Bar Committee. As you probably know, this is a regular meeting between members of the Courts and representatives of various segments of the Bar. If the Bench feels that the AG should be using section 40 of the Act more aggressively to declare people a vexatious litigant, the Bench and Bar Committee, a somewhat public forum, is the appropriate place to convey the concern. The representative of the AG can make preliminary responses and can take the concern back to responsible people in the department. Matters can be considered from there.

To those of you who have already submitted comments, please feel free to weigh in on this, or suggest your own ideas. To those who have not already submitted comments, it would be great if you can express a view on this when you submit your comments.

In addition to that, please feel free to email all of us with comments about anything in the report, or that should be included in the report, or in reaction to someone else's comment. Or, in the interests of not cluttering up email boxes, you can email me and I'll post your comment to the web right away, and periodically alert people to the fact that there are comments to read.

Thanks so much to all of you for your considerable investment of time on this, and your great work.
David