

CANADIAN INTERNATIONAL TRADE TRIBUNAL  
CANADIAN BAR ASSOCIATION

MINUTES OF BENCH & BAR COMMITTEE MEETING  
October 17, 2001

In Attendance:

CITT	Counsel
Pierre Gosselin	Tom Akin
Richard Lafontaine	Ron Cheng
Ron Erdmann	Riyaz Dattu
Michel Granger	Randall Hofley
Reagan Walker	Gordon Lafortune
	Scott Little
	Greg Tereposky
	Anne Turley
	Richard Wagner

**1. APPROVAL OF MINUTES OF JANUARY 25, 2001 MEETING**

The minutes of the January 25, 2001 meeting of the Bench and Bar Committee were approved by the Committee.

It was agreed that in the future draft minutes would be circulated within 30 – 45 days following a Committee meeting and finalized within 60 – 75 days so that they can be posted on the CITT and CBA web sites prior to the next Committee meeting. Issues arising from the approved minutes can be discussed at the subsequent Committee meeting.

**2. OPERATION OF THE *SIMA* PROCESS**

The meeting agenda highlighted four areas of discussion on the operation of the *SIMA* process, and covered issues related to customs appeals and government procurement.

- **Update on the CCRA's Treatment of Confidential Information**

It is expected that the Federal Court would likely be hearing the case dealing with the CCRA's treatment of confidential information sometime in the fall or early in 2002.

- **Recent Experiences with Respect to Expiry Reviews**

It was noted that since April 2000 two expiry reviews have been completed (and that another three are pending), and there was discussion on the experiences with the expiry review process.

The issue of the volume and duplication of records was raised, and whether the CCRA and CITT could remedy this through coordinating their efforts. The CITT advised that it had identified areas of duplication with the CCRA and, while no consensus has yet been achieved, the CCRA is aware that this is a matter of concern.

It was agreed that the issue should be kept under review.

- **Revisiting the RFI Process**

It was observed that the RFI process has, over time, become more streamlined and a question was raised whether the Committee might examine the RFI process over the past four to five years to confirm whether it is achieving the objectives for which it was created, and, if not, what could be done to ensure the objectives of the RFI process are being realized.

The CITT indicated that it would consider any suggestions for improvement that the Bar may wish to make. It suggested that counsel approach the RFI process in a less litigious manner, and in particular avoid the flurry of submissions just prior to the hearing, as this would allow the CITT to focus on its preparation for the hearing. The CITT also noted that RFI responses that counsel felt were inadequate could be raised again through the matters-arising process and finally at the hearing. The effectiveness of the RFI process depends, to a large extent, on the goodwill of parties in helping to produce a complete record.

- **Revisiting Injury Allegations**

The issue of injury allegations in injury inquires was raised, and it was suggested by the CITT that it was better for the domestic industry to focus on a dozen quality examples of injury rather than a hundred of lesser quality.

It was observed that a party is free to tender as many injury allegations it considers necessary to prove its case, but that judgment should be exercised in determining the quality of such allegations.

### **3. ACCESS BY FOREIGN COUNSEL TO THE CONFIDENTIAL RECORD OF THE TRIBUNAL**

CBA members indicated that access by foreign counsel to the confidential record of the CITT (under sub-rule 16(2) of the *CITT Rules*) remains a serious issue of concern for the Bar as reflected in the minutes of the previous meeting. There was discussion about whether further consultations were appropriate, including direct input from affected parties as to whether access by foreign counsel to the confidential record would inhibit full disclosure to the CITT of confidential information. There was also discussion about the practical effectiveness of subsection 16(2) of the *CITT Rules*.

The CITT acknowledged the concerns that had been expressed but indicated that it, for the time being, remained satisfied with the current state of the rules. It indicated that if members of the

Bar or any other stakeholders wished to pursue the issue further, written submissions should be made to the CITT on the matter.

#### **4. APPEALS JURISDICTION OF THE TRIBUNAL**

- **Adjournment Requests**

This issue was discussed under “Other Business”.

- **Encouraging Settlements**

It was suggested by the Bar that the current appeals process may not readily lend itself to an examination of the issues relevant to settlement until the actual hearing of an appeal, and the question was raised whether there was merit in exploring ways in which the CITT could facilitate settlement discussions prior to the actual hearing.

The CITT indicated it did not perceive this to be a significant issue at this time noting that as a result of NAFTA, and tariff reductions in general, there were fewer customs appeals. It also observed that, while it did not have any mediation procedures in place, the parties could reduce hearing time by filing an agreed statement of facts.

#### **5. AD HOC CONSULTATIONS AND AD HOC SUBCOMMITTEES**

The Bar indicated that the Committee’s work was valuable and the posting of meeting minutes on the CITT web site was appreciated by members of the Bar. It was suggested, however, that from time to time issues might be identified that necessitated the formation of ad hoc sub-committees or a broader consultation with interested stakeholders.

The CITT stated that, depending on the issue and the context in which it arose, it would give any such requests careful consideration.

#### **6. OTHER BUSINESS**

The CITT noted that government procurement disputes accounted for an increasing proportion of its workload. Accordingly, the Tribunal felt that it would be appropriate to have representatives from that area of practice on the Committee. There was discussion of the CITT’s efforts to inform potential parties of the availability of the process. The CITT drew attention to the electronic complaint form that had been developed and placed on its web site to assist the business community better understand the information requirements for filing a complaint. It is hoped that the form will reduce the number of complaints that are rejected because of filing errors.

With respect to requests for extensions for filing deadlines in procurement proceedings, the CITT highlighted the recent CITT Practice Notice on this issue. It stated that the Notice was issued because the CITT had to deal with voluminous materials in the face of tight timelines. Quite frequently the CITT was extending the time for the issuance of its decision from 90 days to 135

days. The purpose of the Practice Notice was to establish guidelines for consideration of whether there exists a legitimate basis for the granting of an adjournment. Parties should not assume that adjournments would be granted by right. It was hoped initiatives such as the Practice Notice would enable the CITT to render procurement decisions within 90 days.

**7. CLOSE OF MEETING**

There being no other business, the meeting was adjourned.