

**CANADIAN INTERNATIONAL TRADE TRIBUNAL
CANADIAN BAR ASSOCIATION**

**MINUTES OF BENCH & BAR COMMITTEE MEETING
November 27, 2003**

In attendance:

CITT	Counsel
Pierre Gosselin	Tom Akin
Ron Erdmann	Gordon Cameron
Michel Granger	Ron Cheng
Reagan Walker	Glenn Cranker
Randy Heggart	Riyaz Dattu
	Michael Flavell
	Larry Herman
	Ron Lunau
	Darrel Pearson
	Gregory Tereposky
	Susan Clarke (Department of Justice)
	Christianne Laizner (Department of Justice)

1. MAKING CITT PROCEDURES MORE ACCESSIBLE (TOUR OF HEARING ROOM NO. 1)

The Tribunal gave counsel a tour of Hearing Room No. 1. The Tribunal commented upon the extensive renovations which were done and the new computer equipment and hook-ups which had been installed. Besides a reconfiguration of tables and seating, monitors have been installed at counsel and witness tables which will allow simultaneous viewing of exhibits and documents during a hearing. The Tribunal commented on new software which had been installed which permits Members and staff to have electronic access to transcripts and the record. It is expected that eventually, counsel having appropriate software and authorization will also be entitled to access the electronic record.

2. COSTS IN PROCUREMENT PROCEEDINGS

The draft Cost Guidelines for Procurement Complaint Proceedings were discussed. If adopted, these Guidelines will generally provide for flat fees of \$800, \$1,800 or \$3,500, depending upon the degree of complexity of the procurement case, but subject to review by the Tribunal. Presently, Tribunal members review costs in each case, which is time consuming, and an indemnity approach has been adopted. It was reported that median costs awarded have been in the range of \$9,000 - \$12,000. CBA members questioned the reason for reducing costs so dramatically and commented that the Federal Court tariff schedule, which was a model for the draft CITT Guidelines, was viewed as unduly low. The Tribunal asked for comments by December 12, 2003, which some CBA members commented was a short delay.

3. CONFIDENTIALITY GUIDELINES

The Confidentiality Guidelines, which had just been released in final form on the Tribunal's website, were reviewed. The Tribunal summarized the changes that had been made to the Guidelines. The provisions regarding access to confidential information by counsel not resident in Canada were discussed at some length. Counsel expressed general agreement with the directive that foreign counsel be provided with access to confidential information only under the direction and control of Canadian counsel. The Committee then reviewed the more stringent constraints which apply to experts who are afforded access to confidential information, which would be done on a limited basis.

4. DISCLOSURE OF INFORMATION IN CITT STAFF REPORTS

Certain counsel commented on the inclusion, in public staff reports, of "rate of change" data related to confidential information. The Tribunal commented that measures are in place to ensure that confidential information will not be reproduced in a public staff report. The Tribunal undertook to look into the concerns expressed to determine whether the circumstances brought to their attention constituted a departure from such measures.

5. PROTOCOL AND PROCEDURES FOR STAFF INVESTIGATIONS

Counsel asked about the protocol for plant visits in SIMA cases. The Tribunal stated that there is a protocol now in place for Member visits to producer's premises. Counsel do not normally attend such visits. The primary purpose of the visit is for the Members to gain some understanding of the production process. Counsel questioned whether a protocol should be developed for staff visits to ensure that these visits remain neutral. The Tribunal invited counsel to revisit this issue at a future meeting with written views expressed before the meeting.

6. USE OF AIDS TO CROSS-EXAMINATION AND AIDS TO ARGUMENT IN HEARINGS

Some CBA members were of the view that aids to cross-examination were being used primarily for the purpose of leading evidence and not for cross-examining a witness. Others expressed the opinion that some aids to argument were inappropriate or served little value. The Tribunal requested that this topic be raised at a subsequent Committee meeting with recommendations submitted on proposed limits.

7. WHETHER CITT WOULD CONSIDER NUMBERING PARAGRAPHS OF DECISIONS

It was generally thought that numbering paragraphs of decisions would be useful, particularly since decisions are in alternative electronic formats. The Tribunal used the opportunity to announce their plans to number paragraphs in future statements or reasons.

8. WHAT IS THE CITT'S POSITION ON WHEN IN A DAY A FILING WILL BE CONSIDERED LATE, ESPECIALLY FOR PROCUREMENT CASES

The Tribunal stated that it was the Tribunal's practice to accept procurement complaints that are filed by fax before the end of the day, 11:59 p.m. This is not the practice for other filings which must be in by the end of the business day.

9. OTHER BUSINESS

Discussion followed on Committee membership and rotations being made, most recently with Michael Flavell replacing Richard Dearden. The Tribunal commented that although attendance is limited, it wants to hear the views of persons who practice regularly before the Tribunal, including lawyers from the Department of Justice and non-lawyer counsel. That is why the Tribunal had invited several counsel who are not presently Committee Members. It was reported that the CBA Sales and Commodity Tax Section, which is responsible for the Committee within the CBA, has established a subcommittee to consider changes in membership in consultation with the Tribunal.