December 2, 2019

Via e-mail: Paul.Crampton@fct-cf.ca

The Honourable Paul S. Crampton
Chief Justice of the Federal Court
90 Sparks Street
Ottawa, ON K1A 0H9

Dear Chief Justice Crampton:

Re: Federal Court of Canada 2020-2025 Strategic Plan

The CBA members of the Federal Courts Bench and Bar Liaison Committee (CBA Committee) are pleased to comment on the Federal Court's 2020-2025 Strategic Plan's proposed priorities – access to justice (including modernization) and strengthening the Court as a national institution. The CBA Committee consists of CBA members representing areas of law in the core jurisdiction of the Federal Court.[1] We apologize for the delay in responding to the Court's consultation.

Access to justice (including modernization)

We support the continued priorities of increasing access to justice, modernization and digitization initiatives that would accelerate the shift from a paper-based organization. To this end, we encourage more widespread use of e-filing and e-service, electronic proceedings and scheduling and video conferencing. We received favourable comments from our members who participated in videoconferencing for motions where the parties or counsel are in different cities.

Electronic court records permit more efficient records management, leading to cost savings and faster processing. These efficiencies would be an advantage particularly in areas of law where the quantity of documents is voluminous. Electronic records and efficient management are also critical to commerce in Canada as businesses rely on accurate, and up-to-date records to inform commercial decisions, for example the purchase and sale of maritime assets.

The consultation paper refers to artificial intelligence offering "opportunities to increase access to justice, for example by facilitating mediation". We note that Smartsettle, a Canadian technology, was

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[1]   While Justice Canada is represented on the Federal Courts Bench and Bar Liaison Committee, those representatives do not participate in any public statement of the Committee, including this letter.

used to replace a human mediator earlier this year and became the first artificial intelligence tool to resolve a dispute in an English court.[2]

While artificial intelligence, machine learning and similar technologies offer significant potential benefits such as improved efficiency, we ask the Court to use caution if using artificial intelligence in the decision-making process (automated decision-making). Technologies such as artificial intelligence and machine learning may inform a human decision-maker but should not fetter that decision-maker's discretion.

Artificial intelligence may be useful for completing "smart forms" on the Court's website. Combined with other educational tools on the website, smart forms could be of great assistance, particularly to self-represented litigants.

Strengthen the Federal Court as a National Institution

We support promoting awareness of the Court, certain practice areas and types of proceedings (e.g. class actions) that it conducts. Public outreach could include presentations at law schools, bar admission courses, or conferences not typically directed to a Federal Court audience.

We recognize the Court's recent efforts to emphasize that it is "open for business". For example, increased communication between the bench and bar, active case management, efficient discoveries, reduced waiting times for hearing dates and time between hearing and decision make the Court an attractive option for litigants who might otherwise choose another court.

The Federal Court is an important national institution addressing important matters. We support facilities that would allow the Court to operate more effectively (incorporating technological improvements), cost-effectively and securely. We believe that all judges and personnel, staff, registry services, administrative services and archives should be consolidated in one location to better serve each region.

Other priorities

Mediation has become a critical part of the dispute resolution process. Emphasizing and promoting cost-effective mediation at all stages in litigation, including before discovery, is important. We support the Court's efforts to facilitate mediation by travelling to meet the parties. While feedback has been positive, we encourage increased mediation training for judges to continue improving this emerging aspect of the Court's offerings.

Conclusion

Thank you for the opportunity to comment on the Federal Court's 2020-2025 Strategic Plan. We trust our comments are helpful and look forward to working with the Court to implement its strategic plan.

Yours truly,

(original letter signed by Marc-Andre O'Rourke for Kamleh Nicola)

Kamleh Nicola
Chair, Federal Courts Bench and Bar Liaison Committee

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[2]   See Legal Futures https://www.legalfutures.co.uk/latest-news/robot-mediator-settles-first-ever-court-case, February 19, 2019