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March 31, 2004

Nadia Loreti
Acting Director
Supreme Court of Canada
Registry Branch
301 Wellington Street
Room 166
Ottawa, ON K1A 0J1

Dear Ms. Loreti:

RE: Supreme Court of Canada Rules — Proposed amendments

Thank you for your letter of December 17, seeking the views of the SCC/CBA Liaison Committee on the proposed amendments to the SCC Rules. I apologize for the delay in providing our response.

Rule 5 – Computation of Time for Notice of Constitutional Question

We appreciate that suspending notice deadlines for the month of July can have the effect of delaying the hearing when the main parties are ready to proceed. We note, however, that including July in the computation of time may increase "place-holding" interventions. Government interveners can find it difficult to get instructions on an intervention within 30 days, given the need for internal consultations and high-level authorizations. When that happens, a notice of intervention may be filed to preserve the right to intervene, which would then be withdrawn if the eventual instructions were not to intervene. Including July in the time period for notices of constitutional questions may magnify this problem, as legislatures are normally adjourned for the summer, making it more difficult to get instructions.

Rule 21 – Printing Requirements

In our view, the condensed books ordinarily filed on the day of oral argument should be printed on one side of the paper. These are as likely as not to be used by the panel members as a working document during oral argument, and should therefore leave space to make notes.

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Rule 22 – Parties

We note that the proposal to include all administrative tribunals that were before the Court of Appeal, regardless of whether they appeared, is inconsistent with excluding parties before the court of appeal who were not adverse in interest.

Rules 26 and 34 – Service by Fax

We strongly support the addition of service by fax for the notice for leave to appeal and the notice of appeal. We also urge the Court to consider authorizing service by fax under Rule 20(1)(c), on the consent of the party.

Rules 35(1)(b), 36(2)(b) and 37 – Service of Documents

In our view, it is essential that interveners be given a copy of the factums, even if only in electronic format.

Rule 42 – Part VII of Appellant’s Factum

We agree that the provisions in Part VII should be included in the book of authorities rather than the factum. To this end, we recommend deleting Part VII entirely.

We seek guidance from the Court with respect to the requirement to provide statutory provisions in both official languages. Constitution Acts passed by the U.K. Parliament prior to the *Constitution Act, 1982* were adopted in English only. The French translations have no official status, which the Court has noted on occasion (for example in *MacDonald v. Ville de Montreal*, [1986] 1 S.C.R. 460, at 487, per Beetz J.). Does the Court require the bilingual versions of the Constitution Acts, even when the French version is not authoritative?

Rule 42(3) – Intervener’s Factum

We believe that the corresponding provision to Part I of the appellant’s and respondent’s factums should be the intervener’s statement of their interest in the appeal, as well as a highlight of those facts relevant to the issue on which they have intervened. The corresponding provision to Part 5 should be a statement of the intervener’s position in law, rather than asking that the appeal be allowed or dismissed.

Rule 58 – Motions for Intervention

We question whether the reference should be to Rule 55 rather than Rule 56. While the time limit is set out in Rule 56, the authority for motions to intervene is in Rule 55. If the focus of the amendment to Rule 58 is the time period, then perhaps it should read: "all motions for interventions that have been filed within the time periods set out in Rule 56".

We trust that these suggestions will be of use to the Court as it fine-tunes the new Rules. We would be pleased to discuss these matters in greater detail.

Yours very truly,

(original signed by Tamra L. Thomson for Sylvie Roussel)

Sylvie Roussel
Chair
SCC/CBA Liaison Committee