

November 29, 2000

Me Anne Roland
Registrar
Supreme Court of Canada
301 rue Wellington Street
Ottawa ON K1A 0J1

Dear Me Roland:

Re: Supreme Court Rules

The Canadian Bar Association's Supreme Court of Canada Liaison Committee has now had an opportunity to review the draft Rules date stamped September 8, 2000 which were forwarded by cover letter dated October 25, 2000. Our comments are as follows:

- a. We reiterate the points made in our letter to you dated August 18, 2000 and note that a number of the suggestions in that letter are not reflected in the September 8, 2000 draft.
- b. We understand that a draft of the new Rules has not yet been presented to the Justices. We assume that our August 18 letter and this correspondence will go forward to members of the Court with the draft Rules.
- c. We wish to emphasize our concerns about the timelines contained in the draft Rules. In that regard, we refer you to the commentary under the headings "Rule 5" and "Rule 37" in our August 18 letter.
- d. We also wish to comment particularly on Rule 26(2) and Rule 34 of the September 8 draft. A requirement for service on all parties in the court of first instance and the intermediate appellate court, as opposed to all parties which participated in the appeal, will be extremely onerous in some cases. We believe this requirement should be reconsidered.
- e. In addition to the points made in our August 18 letter, we wish to advance two additional suggestions:
 - i. It would be appropriate to relax the rules for service on an applicant for leave to appeal who does not have counsel. Like the current Rules, the draft Rules permit service by

registered or certified mail or by courier. However, proof of service under Rule 20(4) is more strict. Rule 20(4)(d) requires “an acknowledgment of service in the form of a post office receipt or a receipt card bearing the signature of the person served”. In our experience, the requirement for a signature is often impossible to achieve. Self-represented litigants sometimes do not pick up registered mail or answer the door for couriers.

Where an unrepresented litigant has initiated an application for leave, we would suggest that the respondent be permitted to mail its response by registered mail, or to deliver it by courier leaving it at the address which the applicant has given for service. The respondent should not be required to obtain the signature of the applicant. Of course, our suggestion would not apply to service of an application for leave **S** an originating document **S** on an unrepresented respondent.

- ii. In computing time, it would be appropriate to recognize the realities of the holiday season at the end of December. This is typically a busy and important family time. When time periods for taking steps in the appeal process are short and fall during this time, serious disruptions to family and holiday plans can result. For example, if an application for leave to appeal is filed on December 15, the proposed rules would oblige the response to be filed by January 15. This could seriously affect the family plans of counsel for the respondent.

Rule 2 of the Federal Court Rules defines “Christmas recess” as “the period beginning on December 21 in a year and ending on January 7 in the following year”. Rule 6(3) then provides that “unless otherwise directed by the Court, a day that falls within the Christmas recess shall not be included in the computation of time under these Rules for filing, amending or serving a document”. We ask the Supreme Court to include a similar provision in its Rules. In addition to reflecting better the end-of-year realities for most clients and counsel, this amendment would streamline the work and expense for both clients and the Court by reducing the number of motions for extension of time which are now required.

We trust that these comments will be of assistance to the Court and look forward to working with you in bringing this project to a successful conclusion.

Yours truly,

Robert G. Richards, Q.C.
Chair, Supreme Court of Canada
Liaison Committee