Federal Court **Cour fédérale**

PRACTICE GUIDELINES FOR CITIZENSHIP, IMMIGRATION, AND REFUGEE LAW PROCEEDINGS

November 5, 2018

Preamble

These Guidelines serve to identify best practices, clarify the Court's expectations, and launch pilot projects related to procedure for Applications under the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* [the "FCCIR"]. The animating spirit of these Guidelines is Rule 3 of the *Federal Courts Rules* [the "FCR"], which states: *These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.*

These Guidelines have been developed in consultation with the Federal Court Citizenship, Immigration, and Refugee Law Bar Liaison Committee [the "Committee"]. This Committee brings together representatives of the Federal Court, the Department of Justice (Canada), and the main bodies representing citizenship, immigration and refugee law lawyers (the Canadian Bar Association, the Refugee Lawyers Association of Ontario, the Quebec Association of Immigration Lawyers, and the Canadian Association of Refugee Lawyers) to provide a forum for dialogue, review litigation practice and rules, and discuss potential efficiencies and improvements. Committee minutes are available on the Court web site Liaison Committees page, along with the names of representatives of each group. Comments or suggestions regarding these Guidelines are welcome and may be sent via Committee representatives or else to its Secretary at media-fct@fct-cf.gc.ca.

ARCHIVED – Replaced by Notice issued June 24, 2022

Additional Procedural Resources for Litigants
The Court web site provides numerous resources for litigants – see the Information for Litigants page, as well as the sub-menu Applications, which provides procedural time-lines and detailed procedural practice guides.

Open Court Principle – Confidentiality Requests
Pursuant to the open court principle, the general rule in Canada is that court hearings are open to the public and may be reported in full. Applications brought under the FCCIR are therefore normally on the public record, with all documents publicly accessible, even though they are not currently accessible online. Only the Court docket and Reasons for Decision are available via the Court web site. However, pursuant to Rule 151 of the FCR, on motion, the Court may order that all or part of the Court record shall be treated as confidential.

Pilot: Simplified Motion Procedure – Anonymity Order
A party to an application for leave may make a written request to the Registry, to be included within the Application for Leave (filed under Rule 5, FCCIR), or in the Notice of Appearance (filed under Rule 8, FCCIR) if made by the Respondent, that the Court make an order that all documents and recorded entries that are prepared by the Court and which may be made available to the public be amended and/or redacted to the extent necessary to anonymize the party's identity. A cover letter must accompany the leave application indicating that it includes a simplified motion for anonymity made pursuant to these guidelines this Notice, including the proposed style of cause. A party who opposes the request may make a written objection in the party's Memorandum of Argument (filed under Rule 10 or 11, FCCIR). Detailed grounds for the request or objection should be provided, and if a party intends to rely on facts that do not appear on the Court file, one or more supporting affidavits verifying the facts relied on should be included in the perfected leave application (Rule 10, FCCIR) or Respondent's Affidavits (Rule 11, FCCIR). The request shall be determined at the same time, and on the basis of the same materials, as the application for leave.

> **Access to style of cause pending adjudication of motion:** Pending adjudication of the motion for anonymity, the style of cause will be made available by the Court via its online docket in anonymized format i.e., using only the proposed style of cause. If the motion is granted, an Anonymity Order will issue that maintains this anonymized style of cause. If the motion is dismissed, the style of cause will be amended by the Registry to refer to the full written name of the party.
>
> **Scope of anonymization:** for greater clarity, this simplified procedure for an anonymity Order does not cover documents produced by the parties or by the administrative tribunal/decision-maker (i.e., the certified tribunal record). To address concerns regarding access to sensitive or private information in these documents, a party should file a motion for confidentiality under Rule 151 according to the normal motion procedure, or "Informal Procedural Requests" detailed below.
>
> **Model Anonymity Order Request**
>
> The (*identify party*)
> [ ] requests that the Court make an order that all documents and recorded entries that are prepared by the Court and which may be made available to the public be amended and/or redacted to the extent necessary to make the identity of (*insert name*) anonymous;
> [ ] objects to the request for an anonymity order made by (*identify party*) on (*date*).
>
> The grounds for the (*request or objection*) are the following:

ARCHIVED – Replaced by Notice
Issued June 24, 2022

(*Set out grounds and provide supporting affidavit*)

Dated at.................., this......... of.................., 20.... .
(*Name, address and telephone number of party, if acting in person, or the party's solicitor*)

Electronic Filing of Documents
Documents may be filed electronically via the e-filing portal on the Court web site. Although there is no cost to use the e-filing portal, fees under Tariff A of the Rules still apply.

E-Process Pilot Project:
An e-filing Working Group (e-WG) was created at the June 2017 Liaison Committee Meeting. The e-WG consists of members of the private bar, Department of Justice, and Court. It has developed a pilot project for IMM proceedings under which a limited number of cases will proceed via an electronic process model. This pilot was launched October 31, 2018, via a Notice to the Profession. If leave is granted, the matter will be assigned the standard 90 minutes of hearing time, which will not be extended by technology-related delays; any excess time that will be required should be raised if leave is granted, through a joint notification by counsel to the Office of the Judicial Administrator.

Judicial Review of VISA Decisions: Timeline for Filing Application (15 or 60 days)
Paragraph 72(2)(b) of the *Immigration and Refugee Protection Act* [IRPA] provides that the application shall be filed in the Registry of the Federal Court within 15 days, in the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada, after the day on which the applicant is notified of or otherwise becomes aware of the matter. However, some members of the Bar have noted that it is not always clear whether the decision being challenged is a matter arising in Canada or outside Canada. For example, some immigration requests may be processed in Canada even though the applicant is outside Canada. To facilitate handling by the Registry of the Federal Court, the Committee recommends that the Applicant put "Inland Application" or "Application arising outside Canada" clearly on a cover letter for the application. The 15 day requirement will apply to the former, whereas the 60 day requirement will apply to the latter. It would also be helpful to indicate whether the applicant is in Canada or abroad.

Stay Motions
Over the past year, the Court has seen an increase in last-minute motions being brought for a stay of removal from Canada, which may well continue to increase with recent announcements regarding removals. In some cases, the motion is filed with the Court only a few days before the scheduled removal even though the notice of removal had been issued many weeks earlier. In other cases, the motion is filed in response to a notice of removal issued only a few days before the scheduled removal. Such last-minute motions and notices are discouraged for various reasons, including the inability of the responding party to prepare for the motion in the very limited time before the scheduled removal, and increased pressures, resource demands, and costs to all concerned, including the Court, which may have to hear both an interim stay motion as well as a subsequent motion on the merits. Such consequences should be avoidable with more planning and notice, even given the challenges that may be associated with obtaining the cooperation of recipient nations to secure travel documents, which lies outside the control of either party to the motion for a stay of removal. Over the next year, the Committee will invite input from its constituent stakeholders to consider ways to improve current practices, which will be in the best interests of all parties.

ARCHIVED – Replaced by Notice
Issued June 24, 2022

Informal Procedural Requests
Please refer to the Notice on the Court web site entitled "Informal Requests for Interlocutory Relief" issued August 25, 2017, which provides a simplified process for procedural requests that are not opposed by the other party.

Scheduling of Hearings on the Merits
Please refer to the Notice on the Court web site entitled "Scheduling Practice for the Hearing of Applications" amended on October 24, 2018, which sets out the Court's scheduling practice and provides guidance to parties and the profession.

Flexible Schedule for Procedural Steps
If the Court issues an Order granting leave, its normal practice is to set a default schedule for all subsequent steps in the proceeding to be completed. However, as set out in the Order granting leave, parties are normally permitted to agree on revisions to this default schedule, subject to a requirement that all steps be completed by the date of the last fixed procedural step *before* the hearing. This provides the parties with flexibility, while ensuring that the Court has the full record to prepare in advance of the hearing on the merits. In exceptional circumstances parties may make an informal request [pursuant to the Notice on the Court web site entitled "Informal Requests for Interlocutory Relief"] for consideration by the Court of a revised schedule *beyond* this last fixed date.

Pilot Project (Toronto office only): settlement discussions
To assist with the efficient resolution of Applications for Leave and Judicial Review brought under section 72 of the *IRPA*, the Court is developing procedures to facilitate settlement discussions between parties in appropriate cases. This pilot was launched October 19, 2018, via a Notice to the Profession, in the Toronto local office only. Subject to feedback, it may then be expanded across the country.

Book of Authorities
Please refer to the Notice on the Court web site entitled "Books of Authorities" issued May 7, 2013, which clarifies expected practice. In particular, authorities should be filed not later than by the Friday of the week preceding the hearing of the application. Failure to comply may result in the Court's refusal to accept them.

Certified Questions
Pursuant to paragraph 74(a) of the *Immigration and Refugee Protection Act*, "an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question." [emphasis added] Parties are expected to make submissions regarding paragraph 74(a) in their written submissions and/or orally at the hearing on the merits. Where a party intends to propose a certified question, opposing counsel shall be notified at least five [5] days prior to the hearing, with a view to reaching a consensus regarding the language of the proposed question.

A comprehensive listing of certified questions is available on the Court web site.

Publication of Court decisions (including stays)
Effective availability of relevant Court decisions furthers the open court principle and is, ultimately, an access to justice issue. Following discussions with members of the Bar, the Court has endorsed the practice set out in the Notice entitled "Publication of Court Decisions" issued by

ARCHIVED – Replaced by Notice issued June 24, 2022

the Chief Justice on June 1, 2018. As of the date of the Notice, Orders issued on a motion for stay of removal are being published.

Request for Reconsideration of an Order Dismissing an Application for Leave due to Delays in Legal Aid Funding

Pursuant to Rule 397, within 10 days after the making of an order, or within such other time as the Court may allow, a party may serve and file a notice of motion to request that the Court reconsider its terms on the ground that (a) the order does not accord with any reasons given for it; or (b) a matter that should have been dealt with has been overlooked or accidentally omitted. The Court sometimes receives motions for reconsideration (of Orders dismissing leave) in which the Applicant submits that the file had not been perfected due to delayed confirmation of legal aid funding.

Narrowly written, and interpreted according to the principle of finality of judgments and orders embraced by the concept of *res judicata*, Rule 397 does not provide authority to the Court to decide a leave application a second time. In cases where a party is waiting for approval of legal aid funding, the onus is on the party, or prospective counsel, to bring this fact to the attention of the Court, by letter copying opposing counsel, including evidence of the expected or typical time-line for a decision by the legal aid body. In such circumstances, the Court will consider the letter and, if appropriate, defer dismissal of the application [for delay] for a short period of time (not exceeding twenty-one [21] days).

"Paul S. Crampton"
Chief Justice

ARCHIVED – Replaced by Notice issued June 24, 2022