



NOTICE TO PROFESSION
PILOT PROJECT (TORONTO LOCAL OFFICE ONLY):
SETTLEMENT DISCUSSIONS IN PROCEEDINGS UNDER THE
IMMIGRATION AND REFUGEE PROTECTION ACT
Revised July 4, 2019

To assist with the efficient resolution of Applications for Leave and Judicial Review brought under section 72 of the *Immigration and Refugee Protection Act*, the Court is developing procedures to facilitate settlement discussions between parties in appropriate cases.

Until leave is granted *and* the certified tribunal record (CTR) is available, counsel may not be well-positioned to provide advice to, and receive instructions from, their clients regarding possible settlement. Given that the CTR is usually not available until at least 21 days after leave is granted, this delays consideration being given to settlement. By the time settlement discussions are initiated and a settlement reached, scarce judicial resources have already been spent in preparation for the hearing. Furthermore, when an application settles shortly before the hearing, it is often not possible to reassign the judge to hear another matter, resulting in wasted Court resources and overall scheduling delays – contrary to the statutory mandate to hear applications “without delay.” In order to make efficient use of available public resources, settlement discussions should begin, and be concluded, much sooner.

Therefore, on a pilot basis in the Toronto Local Office only, in a limited number of cases selected by the Court, a production Order (see [Annex A](#)) will be issued by the Court *before* the Application for Leave is formally adjudicated. The Order will require the tribunal to provide parties and the Court with a copy of its CTR within 21 days of receipt of the Order. If leave is granted, parties shall, within 15 days of the date of the Order granting leave (see [Annex B](#)), consider the possibility of settling the Application, and if both agree that it is appropriate, they shall engage in settlement discussion. Following this discussion, if any, the Respondent shall file a statement of the outcome of settlement discussions, and if settlement is reached, the parties shall immediately inform the Court and take necessary steps to discontinue the Application or request a Judgment on consent (see [Annex C](#)). Settlements, if they are to take place, are encouraged to be finalized within this 15-day ‘settlement window.’

Implementation of Settlement Agreement: Discontinuance or Judgment on consent

Discontinuance (on Consent): If parties settle an Application for Judicial Review in respect of a decision by or on behalf of the Minister, it is common practice simply to agree to have the underlying decision re-determined, and discontinue the application before the Court. Based on feedback from members of the private Bar, it is recommended that a Notice be filed with the Court indicating that the parties discontinue the proceeding based on a settlement ([Annex C](#)).

The Notice, including reasons for consent as set out in Annex C, Part 3, shall be transmitted by a client representative to the relevant office.

Discontinuance (Unilateral – NOT on Consent): in some circumstances, whether following settlement discussions or even prior to such discussions, an Applicant discontinues the Application without having reached any agreement with the Respondent on terms related to the discontinuance. If so, Rule 166 applies: “A party shall file a declaration of settlement or a notice of discontinuance in Form 166 in a proceeding that has been concluded other than by a judgment or discontinuance on consent.”

Informal Motion for Judgment (on Consent): If parties agree to settle an Application for Judicial Review in respect of a decision of the Immigration and Refugee Board, it is common practice for parties, on consent, to bring a motion requesting a Judgment of the Court to set aside the decision of the Board and return the matter for redetermination. Parties may seek leave, by way of the attached Notice ([Annex C](#)), to be relieved from the requirement to bring a formal motion record if the following requirements are met. In particular, the Notice should:

- a) confirm that all parties consent to the request;
- b) set out the facts relevant to the request;
- c) provide the parties’ submissions relevant to the request; and
- d) include a recital of the exact relief sought (draft consent Judgment).

The facts relevant to the request should include an indication of which of the grounds set forth in s. 18.1(4) of the *Federal Courts Act* applies.

Paul S. Crampton
Chief Justice

ANNEX A - PRODUCTION ORDER TEMPLATE

Federal Court



Cour fédérale

Date: YYYYMMDD

Docket: IMM-XX-XX

Ottawa, Ontario, (long date format, e.g. November 10, 2018)

PRESENT: The Honourable Mr. Justice XX

BETWEEN:

XXXXXX

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

ORDER

UPON AN APPLICATION for leave of the Court to commence an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada, dated XXXX;

AND UPON READING the material filed;

THIS COURT ORDERS, pursuant to Rule 14(2) of the *Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, that the Tribunal shall send certified copies of its record to the parties and to the Registry of the Court within twenty-one (21) days of receipt of this Order.

“XXXX”

Judge

ANNEX B – AMENDMENT TO LEAVE GRANTED ORDER TEMPLATE

(for cases in respect of which a production Order has been issued)

4. Within fifteen (15) days of receipt of this Order, the parties shall consider the possibility of settling the Application, and if both agree that it is appropriate, they shall engage in settlement discussions, and the Respondent shall file a statement of the outcome, and
 - a. If settlement is reached, the parties shall then take necessary steps to Discontinue the Application or request a judgment on consent; or
 - b. If no settlement is reached, the parties may advise the Court that settlement is a reasonable possibility, and may request the Court’s assistance in facilitating settlement. The Court will consider providing such assistance when settlement discussions are at an advanced stage and there is some reasonable prospect of achieving a settlement. In such cases, the Court may provide one session of judicially-assisted mediation that will not delay the scheduled hearing. Court mediation is contingent on available judicial resources.

ANNEX C – DRAFT NOTICES

NOTICE #1: NOTICE OF NON-SETTLEMENT

(General Heading – use Form 66)

Pursuant to the Order of the Federal Court granting leave in the within application for judicial review and requiring the parties to consider the possibility of settlement by (*insert date*), the parties advise that (*check all boxes that apply*):

- The parties have not agreed to settle the within application for judicial review, and:
 - Both parties request the Federal Court’s assistance in continuing settlement efforts (*provide details*) (*Note: Settlement discussions should be at an advanced stage, with only surmountable issues remaining, that the Court may help to overcome through one session of judicially-assisted mediation that will not delay the scheduled hearing. Court mediation is contingent on available judicial resources*). OR
 - Do not request the Federal Court’s assistance in continuing settlement efforts.
- The parties have not completed settlement discussions and will file a further Notice of Settlement Status within 15 days of today’s date.

This Notice is being submitted by the Respondent (check only one box):

- On consent of all parties.
- On another basis (*provide details*):

(If not submitted on consent, a copy of this Notice of Settlement Status must be sent by the submitting party to the other party.)

Signature

(Name, address, telephone and fax number of solicitor or party)

Date

NOTICE #2: NOTICE OF DISCONTINUANCE

(General Heading – use Form 66)

(Complete only if the application for judicial review is being discontinued and the parties are NOT requesting an Order of the Court.)

(check only one box)

The Applicant wholly discontinues this application for judicial review, without any consent agreement, pursuant to Rule 166 of the *Federal Courts Rules*, SOR/98-106.

OR

The parties have agreed to settle this application for judicial review and Discontinue the application. The applicant requests that the within application be immediately discontinued on consent of the Respondent, without the filing of a Notice of Discontinuance in Form 166. This Notice shall be transmitted by a client representative to the relevant office.

CONFIRMATION OF CONSENT

This Notice is being submitted by or on behalf of the (insert submitting party) (check only one box):

On consent of all parties.

On another basis *(provide details below)*:

(If not submitted on consent, a copy of this Notice of Discontinuance must be sent by the submitting party to the other party.)

Signature

Date

(Name, address, telephone and fax number of solicitor or party)

**NOTICE #3: NOTICE OF SETTLEMENT and
REQUEST for JUDGMENT ON CONSENT**

(General Heading – use Form 66)

(Complete only if the parties have agreed to settle the application for judicial review and are requesting a Judgment of the Court.)

The parties have agreed to settle this application for judicial review and request a Judgment of the Court. The parties agree that the within application be settled for the following reasons. The federal board, commission or other tribunal (check the boxes that apply):

- acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
- erred in law in making a decision or an order, whether or not the error appears on the face of the record;
- based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
- acted, or failed to act, by reason of fraud or perjured evidence;
- acted in any other way that was contrary to law.

(Identify any agreed-upon errors in the decision under review and/or breaches of procedural fairness and/or other grounds for settlement)

As a result, the parties request that:

- The Federal Court issue a Judgment on Consent in the form attached as Schedule “A” to this Notice, without a formal motion record or further correspondence from the parties, having regard to Rule 3 of the *Federal Courts Rules* and, *mutatis mutandis*, to the August 25, 2017 [Notice to the Parties and the Profession: Informal Requests for Interlocutory Relief](#). The Court may, for any reason, require a formal motion record or further information.

This Request is being submitted by or on behalf of the *(insert submitting party)* on consent of all parties. *(If each party submits the Request separately, a copy must be sent to the other party; or a single joint copy, signed by both parties, may be submitted.)*

Signature

**(Name, address, telephone and fax number
of solicitor or party)**

Date

SCHEDULE “A”

Federal Court



Cour fédérale

Date: YYYYMMDD

Docket: IMM-XX-YY

City, Province, (long date format, e.g. November 10, 2018)

PRESENT: The Honourable Mr. Justice XX

BETWEEN:

XXXXXX

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT ON CONSENT

UPON informal motion in writing for Judgment, brought on consent of the parties, dated
(insert date);

AND UPON considering Rule 3 of the *Federal Courts Rules* and, *mutatis mutandis*, the
August 25, 2017 *Notice to the Parties and the Profession: Informal Requests for Interlocutory
Relief*;

AND UPON reviewing the Notice of Settlement Status filed and the Reasons for Settlement identified therein;

AND UPON noting the parties' agreement that (*insert Reasons for Settlement*);

AND UPON noting the consent of the parties; and

AND UPON being satisfied that [Choose (i) [it is in the interests of justice that the requested relief be granted] OR (ii) [that the Tribunal erred by (*identify the basis for the consent agreement, as set forth in subs. 18.1(4) of the Federal Courts Act*)] OR (iii) [there are grounds to grant the relief sought];

THIS COURT'S JUDGMENT is that this motion and the application for judicial review are granted. The underlying decision (*include date of decision*) is set aside, with the matter to be re-determined by (*identify the decision-maker*).

“XXXX”

Judge