Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

OP 22

Judicial Review

Canada

OP 22 Judicial Review

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Updates to chapter

Listing by date

Date: 2005-10-24

Minor changes have been made throughout this chapter. Any previous version should be discarded. Noteworthy is that the section on cross-examinations, formerly at 5.8, has now become section 13.

1. What this chapter is about

This chapter provides an understanding of the process for judicial reviews of decisions made under the *Immigration and Refugee Protection Act* (IRPA) for which no specific right of appeal exists. This chapter deals specifically with overseas files that are subject to judicial review.

2. Program objectives

The judicial review process is consistent with the obligation to ensure that decisions made under IRPA comply with the *Canadian Charter of Rights and Freedoms* and the principles of fairness and non-discrimination. The judicial review process gives a person who is affected by such a decision the means to have the reasonableness of that decision reviewed by the Federal Court.

3. The Act and Regulations

For legislation concerning judicial reviews see:

Application for judicial review	A72(1)
Provisions governing an application	A72(2)
Right of Minister	A73
Provisions governing a judicial review	A74
Rules	A75(1)
Inconsistencies	A75(2)

3.1. Forms

Nil.

4. Instruments and delegations

Nil.

5. Departmental policy

5.1. Distinction between an appeal and judicial review

In an appeal or an application for judicial review, the appellant or the applicant, as the case may be, seeks to challenge a decision adverse to their interests.

For appeals, IRPA gives appellants the right to seek a remedy provided for in the Act from a specific level of appeal, such as the Immigration Appeal Division of the Immigration and Refugee Board. A decision that has been appealed can be disposed of by:

- dismissing the appeal;
- staying the effect of the decision that was appealed; or
- allowing the appeal; and either
  - substituting the appellate tribunal's decision for the decision that was made; or

- sending the issue back to the decision maker for reconsideration.

Usually the determination of the appeal is based on the question of an error in law or fact or both; or on the belief that a principle of natural justice has not been followed; or, sometimes, on the existence of sufficient humanitarian or compassionate considerations to warrant special relief. For more information on appeals, see OP 21.

In contrast, a judicial review of a decision is not an appeal on the merits of the case. The Court cannot substitute its decision for that of the decision maker. Rather, the Court is examining the process that led to the decision and determining if this process was fair and reasonable. If the Court determines that it was not, the Court may only quash the decision in question and order a redetermination. Judges cannot order which decision is to be made, although they may issue directions as to how the redetermination is to be carried out.

Pursuant to section 18 of the *Federal Courts Act*, if the relief sought is based on a defect in the form of the decision or on a technical irregularity, the Federal Court can refuse relief if no substantial wrong or miscarriage of justice took place, or it can take steps to correct the irregularity. (See excerpts of sections 18 and 18.1 in Appendix B.)

5.2. Leave required

A72 through A75 provide for judicial review by the Federal Court of any matter under IRPA. The review is commenced by making an application for leave to the Court. Further, leave cannot be sought until the applicant has exhausted all avenues of appeal to which they might be entitled. The requirement for leave does not in itself deprive applicants of an independent review of their cases; the Federal Court manages this screening mechanism itself to ensure that meritorious cases continue to be granted leave for a full judicial review.

5.3. Time limit for filing application for leave

If an issue arises from a decision made outside Canada, the applicant has 60 days after being notified of the decision to apply for leave and judicial review [A72(2)(b)]. In certain circumstances, the Court may extend this deadline.

5.4. Possible outcomes of an application for leave

The judge is required to dispose of the leave application without delay and in a summary way [A72(2)(d)]. The Court usually disposes of leave applications without personal appearances. If the leave application is denied by the Court, then the matter is at an end. If, however, the leave application is granted, then the judge will set the conditions for the full hearing of the judicial review application.

5.5. Scheduling of judicial review hearing

The judge who grants leave has to fix a date and place for the full hearing no sooner than 30 days and no later than 90 days after granting leave, unless the parties agree to an early hearing.

5.6. Appeals of decisions of the Federal Court

The Federal Court judge's decision on the application for leave is final and cannot be appealed. A decision of a judge on a full judicial review application can be appealed to the Federal Court of Appeal, but only if the judge certifies that a serious question of general importance is involved [A74(d)]. The party requesting that a serious question of general importance be certified has to specify the precise question. Under subsection 18(2) of the *Federal Court Immigration and Refugee Protection Rules*, the wording of the certified question is ultimately determined by the judge who certifies it.

5.7. Appeals of decisions of the Federal Court of Appeal

Under subsection 40(1) of the *Supreme Court Act*, decisions of the Federal Court of Appeal can be appealed to the Supreme Court of Canada only with leave of that Court.

6. Definitions

Affidavit	An affidavit is the applicant's or officer's sworn recital of the facts and procedure followed relevant to the decision that is being challenged by way of judicial review. Affidavits filed in the Federal Court must conform to the Court's rules regarding formality. For more information, see section 12 below.	
Application	In this chapter, the term “application” refers to either applications for leave to commence an application for judicial review, or applications for judicial review, depending on the context.	
Certiorari	Roughly translated, this means "inform me more fully." This writ commands an inferior tribunal to provide its record to the superior court for review "to the end that justice might be done." The result of a successful application will be the quashing of the tribunal’s decision. These writs are not usually issued if there is an appeal process provided by statute. On *certiorari*, the court does not delve into the merits of the case, but questions the jurisdictional and procedural aspects of the decision. This is one of the writs that is usually sought in judicial reviews of officers’ decisions, i.e., to quash a decision; the other is an order of *mandamus* referring the decision back for reconsideration by another officer.	See also Prerogative writs
Habeas Corpus	This means literally "you have the body." It directs the authority who has an individual in custody to come forward and justify the detention. This centuries-old remedy against arbitrary imprisonment is fundamental to our system of justice. The detaining authority must make a "return," or response, to the writ to show that the detention is lawful. This writ does not arise in an officer’s decisions.	See also Prerogative writs (below)
Mandamus	This writ ("we command") is issued to compel the performance of a duty. It is available in cases where the injured party has a right to have a thing done and has no other specific means of compelling its performance. It is used to compel public officers to perform duties imposed upon them by common law or by statute, or to compel tribunals to proceed in matters within their jurisdiction. The person against whom it is issued must be under a legal duty to act in a certain way, must have been asked to act, and must have refused to do so. If granted, the writ compels the performance of the act required. This writ may be sought if there is a long delay in making a decision on a file. If there is a good reason for the delay, this application will not succeed, but may be deferred for a fixed period to be brought back before the court if there is no decision by that time. For example, if an officer is waiting for	See also Prerogative writs (below)

	additional information from a third party who is taking an unreasonably long time to answer, an applicant may seek an order compelling the officer to make a decision without waiting for that information.	
Prerogative writs	The principal common-law means for judicial review of the decisions of government tribunals are found in the remedies of *habeas corpus*, *certiorari*, *mandamus* and prohibition. Although they are now regulated by legislation, their origins are in the common law. They are issued only by superior courts: those courts which, historically, did not derive their authority from statute but from the Crown. These remedies are referred to as "prerogative writs," a term which emphasizes that they are issued at the discretion of the court. Although the function of each writ is somewhat different, the main feature of each is to permit the courts to supervise the actions of inferior tribunals ("inferior" means a court that is subject to the control of a higher court). This supervisory role is not all-encompassing because the courts are limited in the extent to which they can go beyond the jurisdictional and procedural aspects of a decision to review the actual merits.	See also above: • *Certiorari* • *Mandamus* • Prohibition • *Habeas Corpus*
Prohibition	This writ is issued to prohibit the exercise of a particular function or act. It is considered to be a sister remedy to *certiorari*; the two differ in the time appropriate for their use. While *certiorari* quashes something already done erroneously, prohibition seeks to prevent an error from either occurring or continuing. Prohibition does not lie until a right to complain has arisen, but it may be sought as soon as an absence of jurisdiction has either arisen or may clearly be foreseen. This writ may be sought to prevent a decision from being made, or from being made in a particular way. For example, if an applicant believes that the officer responsible for the file is biased, the applicant could seek an order of prohibition preventing the officer from making a decision and an order of *mandamus* compelling the transfer of the file to another officer.	See also Prerogative writs (above)
Tribunal	In this chapter, “tribunal” means the person or the body whose decision, order, act or omission is the subject of the application, unless expressly stated otherwise in this text, e.g., an officer or their supervisors or program managers, and senior officials of the Department.	

7. Procedure: When an application for leave is filed

From the day that they are notified of the decision, a foreign national has 60 days to file an application for leave to submit a judicial review application. In order for leave to be granted, a judge of the Federal Court must be satisfied that there is a serious issue to be heard.

After an application for leave has been filed, the Court may request a copy of the reasons for the refusal. In overseas cases, this will be interpreted as a request for a copy of the refusal letter and the CAIPS notes. The Litigation Management Division (BCL) will advise the visa office as to what procedure to follow. In most cases, the visa office will be asked by BCL to provide a copy of this material to the Court Registry, the applicant's lawyer and the Department of Justice lawyer. All addresses and fax numbers will be provided by BCL.

In some cases, it may be necessary to submit affidavit evidence to oppose the leave application. If this is required, BCL will advise the officer.

The leave application will be considered by a judge of the Federal Court, who will determine whether there is a serious issue to be heard. If leave is granted, a full judicial review of the decision will be held at a later date.

If leave is granted, the officer will be contacted by BCL and advised as to what material must be provided. Normally, this will consist of certified copies of the file. In addition, the Department of Justice lawyer will work closely with the officer to develop an affidavit opposing the judicial review application.

8. Procedure: Where additional documents are requested by the Court

Where a judge considers that documents in the possession or control of the tribunal are needed to properly dispose of the application, the judge may issue an order specifying which materials are to be provided. The tribunal or the officer assigned to the task must provide certified true copies of the material without delay: two to the Court Registry and one to each of the parties, plus one for the DOJ lawyer assigned to the case.

In all cases, the officer will be provided with clear instructions from either BCL or the Department of Justice.

9. Procedure: Where records are requested

If leave is granted, the Court Registry will advise Citizenship and Immigration Canada (CIC). The Department, through BCL, will notify the visa office concerned and provide clear directions for the preparation of the certified tribunal record (CTR). The CTR is, for all practical purposes, a copy of the visa office file and the CAIPS notes. This must be prepared in a certain way and sent to a number of addressees. In its instruction letter, BCL will give specific, tailored instructions for the preparation of the record.

Normally three copies of the certified tribunal record are prepared:

- one for the Court Registry;
- one for the applicant or their counsel; and
- one for the Department's counsel (the DOJ lawyer assigned to the case).

There will also be an ordinary copy of the file sent to BCL. Specific instructions will be provided to the visa office, along with contact numbers and addresses.

10. Procedure: Preparing the record

Upon receipt of the order granting leave, BCL will direct the officer to immediately prepare the record of the subject of the application on consecutively numbered pages. BCL's instructions should be followed precisely and given the highest priority possible.

Normally, in response to an application for judicial review, officers will be directed to do the following:

1. Make three certified copies and one additional non-certified copy of the file concerning the applicant's application for leave. This should include a CAIPS printout up to the date of the refusal only. The officer will:

- number the pages of the original file, then make copies from the numbered original;
- certify the file, binding the pages of each copy in a secure way (e.g., with a grommet or pin). The first page of each certified copy should be a cover letter, the details of which BCL will provide.

Note: It is crucial for the officer to carefully and promptly review all the documents and information in the file(s) before preparing the certified tribunal record. The officer must immediately bring to the attention of BCL and the DOJ lawyer the documents or information that CIC may not wish to include, and thereby disclose, in the certified tribunal record. The package must not include the e-mail from BCL or any other material postdating the refusal. Furthermore, where material on file may be CLASSIFIED for security reasons (e.g., communication with the Security Liaison Officer or the Canadian Security Intelligence Service) or exempt from disclosure by reasons of solicitor-client or other privilege, officers should contact BCL and/or the assigned DOJ lawyer for further instructions on the preparation of the tribunal record.

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2. Send one certified copy of the file by commercial courier to each of the following (BCL will supply the officer with the appropriate names and addresses):

- the Court Registry;
- the DOJ lawyer;
- counsel for the applicant.

3. Send the non-certified copy by commercial courier to CIC/BCL, to the attention of the BCL officer in charge of the judicial review.

Note: Retain the original file at the visa office.

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4. Prepare a case summary, preferably in affidavit format. This should be done at the same time as the certified copies are prepared. The case summary should provide:

- details of the assessment;
- the reasons for the refusal; and
- the following personal information about the decision-making officer:
  - ♦ full name;
  - ♦ rank (FS 1, FS 2, etc.);
  - ♦ date the officer joined the foreign service;
  - ♦ date the officer commenced the relevant posting;
  - ♦ non-Mitnet phone and fax numbers at which the officer can be reached by the lawyer; and
  - ♦ any scheduled absences from the office in the months to come.

For more information, see section 12 below.

5. Send the case summary by e-mail to the assigned DOJ litigator and BCL. Remember the case summary *must not* be given to either the Federal Court or to counsel for the applicant; it is for the use of BCL and Justice *only*.

(See excerpts of *Federal Court Immigration and Refugee Protection Rules* in Appendix C.

11. Procedure: Litigation strategy

Upon receipt and review of the case summary and the certified copy of the file, the DOJ lawyer and BCL will decide whether to consent to or oppose the application for judicial review. If it is decided to oppose, an affidavit will be prepared for the officer to execute. BCL normally advises the officer of the specific deadlines to meet. Federal Court rules confine CIC to specific time limits for the filing of the respondent's record and affidavit. The officer should therefore give BCL's instructions top priority.

12. Procedure: Preparing an affidavit

The DOJ lawyer will deal directly with the officer in the preparation of the affidavit. The affidavit is due 30 days from the filing of the applicant's affidavit. Normally, the DOJ lawyer will review the officer's case summary (which was written in affidavit format) and make any necessary changes. Once this review is complete, the officer will be instructed to swear the document. This process ensures that the affidavit places an appropriate emphasis on the legal issues at play in the judicial review application. (See sample affidavit in Appendix A.)

12.1. Processing particulars

The following particulars apply to affidavits:

1. The affidavit must be on letter-sized paper. (A4 is fine.)
2. The text of the affidavit must be double-spaced.
3. A readable and common font such as Times New Roman must be used.
4. The text must be in at least 12-point type.
5. An electronic copy of the affidavit should be kept to help with the redrafting process.
6. The same person who is commissioning the officer's affidavit must commission any exhibits attached to the affidavit. The failure to properly commission exhibits is the most common technical flaw in the affidavits that DOJ lawyers receive from officers.

12.2. Commissioning an affidavit

Under sections 52 and 53 of the *Canada Evidence Act,* officers of the Canadian diplomatic, consular and representative services, while performing their functions in any foreign country or in any part of the Commonwealth and Dependent Territories other than Canada, have the authority to administer, take or receive oaths, affidavits, solemn affirmations or declarations. This includes ambassadors, envoys, ministers, chargés d'affaires, counsellors, secretaries, attachés, consuls general, consuls, vice-consuls, pro-consuls, consular agents, acting consuls general, acting consuls, acting vice-consuls, acting consular agents, high commissioners, permanent delegates, acting high commissioners, and acting permanent delegates.

The following words must also be used on the first page of any document that is attached to the affidavit as an exhibit:

> This is Exhibit No. ___ mentioned and referred to in the affidavit of _____
>
> Sworn before me this day of
>
> A.D.200X.
>
> A Commissioner for taking affidavits

_____

Note: Exhibits must be commissioned at the same time and by the same commissioner as the affidavit to which they are attached.

12.3. Preparing for a cross-examination

The most important part of every cross-examination is the preparation. Preparation takes place both when the officer, in conjunction with the DOJ lawyer, is preparing their affidavit and prior to the cross-examination itself.

Here are some points to keep in mind:

- The affidavit is the officer's evidence. The officer should be absolutely satisfied with every detail of the affidavit that is drafted and with the exhibits that are attached to it. Any problems should be discussed with the DOJ lawyer and BCL.

- The officer should know the facts of the case. The officer should go over the tribunal record and the CAIPS notes.

- The officer must remember that on each statement of fact made in the affidavit, they should be able to answer the questions, “What is the source of this statement?” and “What is the basis for my conclusion?”

- The officer should have a telephone discussion with the DOJ lawyer to try to identify the likely areas on which they will be examined and confirm what their position is with respect to those issues.

- It is the DOJ lawyer’s responsibility to fully prepare the officer for the cross-examination. The officer should tell the DOJ lawyer or BCL if they feel uncomfortable or nervous at all. The DOJ lawyer or BCL will be able to answer any questions that the officer may have about the process, the type of questions that will be asked, what the officer may bring, etc. Officers should not be afraid to ask.

13. Procedure: Cross-examinations

Just as a party may cross-examine a witness who testifies, the applicant has the right to cross-examine the officer on their affidavit. It is up to the applicant to decide whether any cross-examination is necessary. Accordingly, a cross-examination will not result every time an affidavit is filed, but being cross-examined is a possibility whenever an officer files an affidavit. Both the officer and the Justice counsel should bear this in mind as the affidavit is being prepared.

Upon filing of the officer’s affidavit, the applicant has 20 days in which to proceed with the cross-examination of the officer. Officers must make themselves reasonably available within that period, or the Court may strike out the affidavit. The 20-day period may be extended, on consent, to up to a total of 30 days from the date the affidavit is filed. In extraordinary circumstances, extensions for longer periods of time may be granted by the Court, on motion by a party.

Because of geographic considerations, officers are usually cross-examined by teleconference call. The officer and the Department of Justice (DOJ) lawyer will agree on the day and the specific time of the teleconference call. The speakers are the applicant’s lawyer, the DOJ lawyer and a stenographer. The lawyer for the applicant will call the officer. The lawyer and the DOJ litigator will introduce themselves. There will be a stenographer present, who is there only to record each question posed by the applicant’s counsel and each answer the officer provides to those questions. There will be no judge present since the officer is not giving evidence as in a trial but, rather, is giving evidence to be recorded later for use at a judicial review. When the officer is called, they will be required to swear an oath or affirm that they will answer questions truthfully. Another consular officer will be there to administer the oath or affirmation.

The applicant's counsel will then begin to ask the officer questions. The examination typically begins with questions regarding the officer's occupation, present position and the number of years the officer has spent in that position and/or location. The examination then moves on to specific questions about the officer's decision in the particular case.

After the applicant's counsel finishes asking the officer questions, the DOJ lawyer may ask questions. This is called redirect examination or reply examination. The purpose of redirect examination is to try to clarify the testimony the officer gave to the applicant's counsel and not to set out the officer's version of the case in full.

As mentioned above, there is no judge in the room. If a dispute arises between the parties as to the propriety of a question, or a refusal to answer a question, the parties bring the matter before a judge for resolution at a later date. If the judge agrees that a question should have been answered, the officer may be required to re-attend to answer any questions improperly refused. In practice, however, such motions are rarely brought.

Note: Once the cross-examination begins, the officer should note that the DOJ lawyer cannot discuss any aspect of the case with them until their cross-examination is completely finished.

The applicant may choose to conduct a written cross-examination instead of an oral one. Written cross-examinations are uncommon but permitted. In that case, the applicant's lawyer will file and serve a list of questions to be answered by the officer. These must be answered in affidavit forms and should be prepared in consultation with the DOJ lawyer.

14. Procedure: NHQ point of contact

Officers who encounter issues or circumstances not addressed in this chapter should refer their question or comment to the Litigation Management Division at National Headquarters.

15. Procedure: Roles and responsibilities

15.1. Role of the Litigation Management Division (BCL)

The Litigation Management Division, a directorate in the Case Management Branch at National Headquarters, is involved in all overseas litigation cases. From the onset of litigation, BCL acts as a liaison between DOJ lawyers and the officer whose decision is being challenged. BCL provides instructions to DOJ lawyers with respect to pending litigation; analyses policy, program and legal issues arising in specific cases, and coordinates program input. In all cases, BCL will instruct the officer on what to do and when to do it.

BCL also monitors and manages developments in the areas of immigration, citizenship and refugee litigation, and ensures that preventive program action is taken to lower program vulnerability to court challenges. This involves ensuring that program and policy sectors have adequate opportunity to review, evaluate and respond to developments in litigation issues that may have significant consequences for departmental policy or programs. BCL identifies issues requiring strategic consideration by the Department's senior management through the Litigation Strategy Committee.

15.2. Role of Department of Justice lawyers

DOJ lawyers represent the Minister in all applications before the Federal Court and in the provincial courts. BCL analysts issue instructions to the lawyers based on an analysis of the issues and program considerations. Some cases will involve direct communication between DOJ and the visa office.

15.3. Role of Departmental Legal Services Unit

The Departmental Legal Services Unit (DLSU) is staffed by Department of Justice lawyers and provides legal support to CIC in its day-to-day operations. If a case is sufficiently novel or complex, the Department of Justice lawyer or the BCL analyst may ask that a DLSU lawyer be assigned to the case. This lawyer will provide additional support to the litigator and the BCL analyst, where required. Examples of cases where a DLSU lawyer might be involved include Charter challenges, cases with serious policy implications, or high-profile litigation.

Appendix A Example of an Affidavit

Registry No. IMM-XXXX-97

FEDERAL COURT OF CANADA

B e t w e e n:

[INSERT FULL NAME OF PARTY]

Applicant(s)

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AFFIDAVIT OF FRANCIS LAURIE SMITH

I, FRANCIS LAURIE SMITH, Second Secretary (Immigration) at the High Commission for Canada in London, England, United Kingdom [or, at the Embassy of Canada in Lima, Peru, etc.], **MAKE OATH AND SAY AS FOLLOWS**:

1. I am a foreign service officer at the FS-1 (or 2, or EX-01, etc.) level and I have been employed by the Department of Citizenship and Immigration in this capacity since January yy, 200x. I have been appointed as an officer in the Immigration Section of the Canadian High Commission in London, United Kingdom, since September yy, 19xx. My duties include the assessment, evaluation and processing of applications for permanent residence in Canada submitted to the Canadian High Commission in London and, being the officer assigned to process the Applicant's permanent resident visa, I have knowledge of the matters to which I hereinafter depose.

2. *From paragraph 2 onwards, present the facts of the case under judicial review, usually in chronological order. If citing an important or key document, consider including it as an exhibit to the affidavit, bearing in mind that most documents from the visa file are already before the Court in the certified tribunal record. To do so, at the end of the sentence in which the document is referred to, add the words: "a true copy of which I attach as Exhibit A" (or B, C, etc., as the case may be).*

3. *An affidavit also typically includes wording attesting to the truth of the CAIPS notes. A sample of the wording would be as follows:*

Notes taken by me at the interview with the applicant were recorded in the Computer-Assisted Immigration Processing System (CAIPS), an electronic file system in use at [*the name of your visa office*] for the processing of applications for admission to Canada. The steps involved in processing an application are recorded chronologically in CAIPS. When a user quits the CAIPS “notes screen,” their initials, the date and the notes entered are automatically recorded. Thereafter, a user can access and review these notes, but they cannot be modified or deleted.

The notes taken by me at the interview and entered into CAIPS were taken at the time of the interview with the applicant. These notes accurately reflect the questions posed to the applicant and the answers given by the applicant at the interview.

A printout of the CAIPS notes of the interview is included as part of the record, copies of which I certified on XX XX XX and which I have arranged to be transmitted to counsel for both parties as well as the Registry of the Federal Court.

Once you have recited the facts of your assessment of the application for permanent residence, or for a student or temporary resident visa, stressing of course your reasons and considerations in refusing the application, you will close your affidavit by swearing it, as described below:

SWORN BEFORE ME at the)

Canadian High Commission, in)

the City of London, England,) _____

United Kingdom this)

day of [insert month], 20XX.)

_____

A Commissioner, etc.

Appendix B *Federal Courts Act*, sections 18 and 18.1

18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

(2) The Federal Court has exclusive original jurisdiction to hear and determine every application for a writ of *habeas corpus ad subjiciendum*, writ of *certiorari*, writ of prohibition or writ of *mandamus* in relation to any member of the Canadian Armed Forces serving outside Canada.

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.

R.S., 1985, c. F-7, s. 18; 1990, c. 8, s. 4; 2002, c. 8, s. 26.

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

(2) An application for judicial review in respect of a decision or order of a federal board, commission or other tribunal shall be made within thirty days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

(3) On an application for judicial review, the Federal Court may

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

(4) The Federal Court may grant relief under subsection (3) if it is satisfied the federal board, commission or other tribunal

(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(d) 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;

(e) acted, or failed to act, by reason of fraud or perjured evidence; or

(f) acted in any other way that was contrary to law.

(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may

(a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and

(b) in the case of a defect in form or a technical irregularity in a decision or order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.

Appendix C Excerpts from Federal Court Immigration and Refugee Protection Rules

Note: These rules are subject to change by the Chief Justice of the Federal Court.

Obtaining Tribunal's Decision and Reasons

9. (1) Where an application for leave sets out that the applicant has not received the written reasons of the tribunal, the Registry shall forthwith send the tribunal a written request in Form IR-3 as set out in the schedule.

(2) Upon receipt of a request under subrule (1) a tribunal shall, without delay,

(a) send a copy of the decision or order, and written reasons therefor, duly certified by an appropriate officer to be correct, to each of the parties, and two copies to the Registry; or

(b) if no reasons were given for the decision or order in respect of which the application is made, or reasons were given but not recorded, send an appropriate written notice to all the parties and the Registry.

(3) A tribunal shall be deemed to have received a request under subrule (1) on the tenth day after it was sent by mail by the Registry.

(4) The applicant shall be deemed to have received the written reasons, or the notice referred to in paragraph 9(2)(b), as the case may be, on the tenth day after it was sent by mail by the tribunal. SOR/98-235, s. 8(F); SOR/2002-232, s. 15.

Disposition of Application for Leave

14. (1) Where

(a) any party has failed to serve and file any document required by these Rules within the time fixed, or

(b) the applicant's reply memorandum has been filed, or the time for filing it has expired,

a judge may, without further notice to the parties, determine the application for leave on the basis of the materials then filed.

(2) Where the judge considers that documents in the possession or control of the tribunal are required for the proper disposition of the application for leave, the judge may, by order, specify the documents to be produced and filed and give such other directions as the judge considers necessary to dispose of the application for leave.

(3) The Registry shall send to the tribunal a copy of an order made under subrule (2) forthwith after it is made.

(4) Upon receipt of an order under subrule (2), the tribunal shall, without delay, send a copy of the materials specified in the order, duly certified by an appropriate officer to be correct, to each of the parties, and two copies to the Registry.

(5) The tribunal shall be deemed to have received a copy of the order on the tenth day after it was sent by mail by the Registry. SOR/98-235, s. 8(F).

15. (1) An order granting an application for leave

(a) shall specify the language and the date and place fixed under paragraphs 74(a) and (b) of the Act for the hearing of the application for judicial review;

(b) shall specify the time limit within which the tribunal is to send copies of its record required under Rule 17;

(c) shall specify the time limits within which further materials, if any, including affidavits, transcripts of cross-examinations, and memoranda of argument are to be served and filed;

(d) shall specify the time limits within which cross-examinations, if any, on affidavits are to be completed; and

(e) may specify any other matter that the judge considers necessary or expedient for the hearing of the application for judicial review.

(2) The Registry shall send to the tribunal a copy of an order granting leave forthwith after it is made.

(3) The tribunal shall be deemed to have received a copy of the order on the tenth day after it was sent by mail by the Registry. SOR/2002-232, s. 8.

Obtaining Tribunal's Record

17. Upon receipt of an order under Rule 15, a tribunal shall, without delay, prepare a record containing the following, on consecutively numbered pages and in the following order:

(a) the decision or order in respect of which the application for judicial review is made and the written reasons given therefor,

(b) all papers relevant to the matter that are in the possession or control of the tribunal,

(c) any affidavits, or other documents filed during any such hearing, and

(d) a transcript, if any, of any oral testimony given during the hearing, giving rise to the decision or order or other matter that is the subject of the application for judicial review,

and shall send a copy, duly certified by an appropriate officer to be correct, to each of the parties and two copies to the Registry. SOR/2002-232, s. 14.