

# FEDERAL COURT

## How to File an Application for Leave and for Judicial Review?

Proceedings in a court of law can be complicated. As such, you may wish to seek legal advice. For every rule, there are a variety of exceptions and particular applications to specific facts. There are also many ways to seek relief. All these instances cannot be put into this document. The following information is for guidance only. **The Registry cannot give legal advice.**

Judicial review by the Federal Court with respect to any decision, determination or order made pursuant to Section 72 of the *Immigration and Refugee Protection Act (IRPA)* is commenced by filing an **Application for Leave and for Judicial Review** (“leave application”) with the Court.

The Court first considers whether to grant leave to pursue the application (based on the written submissions which must be included in the application record). It is only if the Court decides to grant leave that the case will proceed to an oral hearing, in Court, of the application for judicial review itself. If the Court dismisses your leave application, the application for judicial review is also dismissed and your file will be closed.

### What is required to file a leave application?

Please note that rules 2 and 66(2)(c) of the *Federal Courts Rules* require that any document prepared for use in a proceeding before the Federal Courts must contain either the address of the solicitor representing you or, if you are not represented by a solicitor, an **address for service in Canada** (as defined in rule 2). This is the address to which all documents and Orders will be sent.

1. Your leave application must be filed and served either 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 you were notified or became aware of the decision you are seeking to judicially review (IRPA section 72(2) (b)). IMM rule 5(1) sets out what must be included in your leave application (see form IR-1). IMM rule 5(2) tells you who must be named as respondent.
2. You must set out in the leave application the precise relief that you are seeking on the application for judicial review, should you be granted leave (see IMM rule 5(1) (e)).
3. If you have not received the written reasons of the tribunal / decision maker, you must indicate this in your leave application. The Registry will then send a request to the tribunal, for the written reasons to be sent to the Court, to you and to the respondent (see IMM rule 9).
4. You must pay a filing fee of \$50.00 (see IMM rule 23), at the time of filing your leave application by using a valid VISA, MasterCard or American Express credit card or by cash, debit, a personal cheque or a money order. When paying by personal cheque or money order, it must be made payable to The Receiver General of Canada.
5. You must deliver to the Registry as many copies of your leave application as you will need to serve (see paragraph 6 below). The Registry will certify these copies of your leave application, by stamping them. The Registry will keep the original of your leave application and will return the other certified copies to you.

## **Once I have filed my leave application, is there anything else I need to do?**

Yes. There are many steps you need to take after you have filed your leave application and it has been issued by the Registry. You are responsible for taking these steps within the time limits provided by the *Federal Courts Immigration and Refugee Protection Rules*. Some of these steps are explained below, but please note that there may be other important steps, depending on the circumstances, you may need to take that are not set out herein.

6. You must serve a certified copy of your leave application on the Minister responsible for the administration of the *Immigration and Refugee Protection Act* in respect of the decision you are seeking to judicially review. You must do so within 15 or 60 days as set out in paragraph 1 of this letter. Since a leave application is an originating document, you must serve it in person by delivering a certified copy of your leave application to the Minister and any other respondent which you might have named in the leave application (see IMM rule 7(1)). It is your responsibility to serve the respondent(s). For methods of personal service, see rules 128 to 135, but note that Rule 133 DOES NOT apply for service of a leave application on the Minister.

7. You must file proof of service with the Registry within 10 days of serving your leave application on the respondent (IMM rule 7(2) and rule 146).

8. Within 10 days of being served with your leave application, the respondent may serve and file a Notice of Appearance and file proof of service with the Registry (IMM rule 8). If a Notice of Appearance is filed, all other documents which you will need to file should be served on the respondents, at the addresses indicated in the Notice of Appearance (see rules 138 to 143).

9. You must serve and file your application record within either 30 days of filing your leave application or 30 days after you receive a copy of the tribunal's written reasons or a notice advising you that no reasons were given in your case. (See IMM rule 10(2) for the required content of your application record).

10. Your application record must first be served on every respondent who has filed and served a notice of appearance and then you must file your application record with the Registry. You will need to file proof of service on the respondents when you file the material with the Registry.

11. Once you have served and filed your application record, a respondent who has filed a Notice of Appearance may, within 30 days after you have served your application record, serve on you and file affidavit(s) and a memorandum of argument (IMM rule 11).

12. If the respondent files a memorandum of argument, you may file a memorandum of argument in reply. You have 10 days after being served with the respondent's memorandum to first serve your memorandum in reply on the respondent and then file it with the Registry (IMM rule 13).

13. Your leave application will be considered by a Judge, without a need for you to have to come to Court, in person. If leave is refused, the decision will be sent to you and to the respondent. There is no right of appeal of such a decision.

14. If leave is granted, an order will be issued which will indicate the day and place of hearing of your judicial review application as well as the time limits for the parties to

serve and file further documents. The Registry will send a certified copy of the order to you and to the respondent, as well as to the tribunal / decision maker.

15. The tribunal / decision maker will prepare a complete record of its decision and the evidence on which it was based and send certified copies to you, to the respondent and to the Registry (IMM rule 17).

16. The judicial review matter will be heard on the day and at the place set out in the order mentioned above. If you are not represented by a solicitor, you will need to be there to argue your case. If you are represented by a solicitor, you do not need to attend, but you may do so.

17. If the Federal Court grants your judicial review application, it will refer your case back to the tribunal / decision maker, so your case may be reconsidered on the merits.

**What if more than 15 days have gone by since the decision being challenged was communicated?**

If it has been more than 15 days in the case of a matter arising in Canada, (or more than 60 days for a matter arising outside of Canada), since the decision or order was first communicated to you by the tribunal / decision maker or since you became aware of the matter, a judge may, for special reasons allow an extension of time for filing your leave application.

You must include a written request to the Court in your leave application, asking for an extension of time under paragraph 72(2)(c) of the *Immigration and Refugee Protection Act* (see IMM rule 6(1) and form IR-1).

You must also include in your leave application the evidence and the arguments justifying your request for an extension of time to file your leave application.

A request for an extension of time will be decided by a judge at the same time and on the same materials as your Application for Leave and for Judicial Review.

**Can I represent myself?**

Yes. Pursuant to rule 119, an individual may act in person or be represented by a lawyer in a proceeding. This means you may represent yourself in this matter; however, it is recommended that you seek the advice of a lawyer to assist you.

Please note that Immigration consultants are not necessarily members of the Bar; unless an immigration consultant is actually a member of the Bar, he or she, cannot represent you.

Please read the Information about Registry Services to Assist Self-Represented Litigants indicating what Federal Court Registry staff can and cannot do to help you prepare your case, should you decide to proceed.

**Can I deal with any office of the Federal Court?**

Yes. You may deal with the office of the Registry of the Federal Courts which is most convenient to you. A list of the Federal Court office locations, addresses and phone numbers is accessible on our website under "Registry".