JUDICIAL REVIEWS AND IMMIGRATION APPEALS: GETTING TO YES

This paper will be a practical review of practice before the Federal Court and the Immigration Appeal Division starting with the negative decision that the client receives and moving through the various processes that could lead to the positive decision that the client so desperately wants.

APPEALS TO THE IMMIGRATION APPEAL DIVISION

When a client first approaches you with a negative decision from a visa officer overseas or an immigration officer/PRRA officer in Canada, the first issue to address is whether an appeal lies to the Immigration Appeal Division (“IAD”) of the Immigration and Refugee Board or whether the client is limited to applying for leave to apply for judicial review to the Federal Court. In the case of people who have been sponsored for immigration by family members in Canada, it is the sponsor in Canada that has the right of appeal to the Immigration Appeal Division.\(^1\) Permanent residents of Canada may also appeal to the Immigration Appeal Division against a decision made outside of Canada that they do not meet the residency obligation under section 28 of IRPA.\(^2\) The remaining jurisdiction of the IAD relates to appeals from removal orders made against permanent residents or protected persons. This paper will not deal with those types of cases.

You should also note that in cases where your client has a right of appeal to the IAD, your client must go that route to overturn the decision. The client cannot proceed directly to the Federal Court in such a case.\(^3\) If your client is not successful in his or her appeal to the IAD, your client may be able to seek leave to apply to the Federal Court. But as I will discuss later, the Federal Court will show a high level of deference to the IAD.

APPLICATIONS TO THE FEDERAL COURT

If your client has made an immigration application overseas as a skilled worker or business immigrant, an application for a temporary resident visa as a worker or student or

\(^1\) Immigration and Refugee Protection Act (IRPA), s.63(1)

\(^2\) IRPA, s.63(4)

\(^3\) IRPA, s.72(2)(a); Sidhu v. Canada (M.C.I.), 2002 FCT 260
an application as a Convention refugee abroad, your client’s only option if the application is refused is to apply for leave to apply for judicial review to the Federal Court. Likewise, if your client has made an application for permanent residence in Canada that has been refused, even if that application is sponsored by his or her spouse, your client’s only option is an application to the Federal Court. This could be an important factor when you are advising your client on whether to apply for immigration in Canada or to file a sponsored overseas application instead. Applications made to remain in Canada on humanitarian and compassionate grounds that are refused by either an immigration officer or a Pre-Removal Risk Assessment officer must also be reviewed in the Federal Court.

**Children who are no longer dependents**
There are two types of refusals of sponsored family members where the sponsor does not have an appeal to the IAD. The first involves family members who are children of sponsored members of the family class who are determined not be a dependant by a visa officer. The most common reason would be that the child was over 22 years of age when the application was submitted and attending school full-time, but since the time of the application, the child has ceased attending school or missed a substantial period of school. The sponsor would not have an appeal to the IAD with respect to that person. The only option would be for that child to apply to the Federal Court for leave to apply for judicial review if there has been an error made by the visa officer in the determination. This is a difficult kind of case because it results in one family member being left behind.

**Non-accompanying family members who are not examined**
There is also the often heartbreaking situation that arises from application of s.117(9)(d) of the IRPA Regulations:

117 (9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if

(d) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.

If for some reason your client has not mentioned a spouse or child prior to being landed as a permanent resident, that spouse or child will not be considered a member of the family
class and any sponsored application for permanent residence filed by that person will be refused and the sponsor will not have an appeal to the IAD. The spouse or child’s only option is to make an application for permanent residence on humanitarian and compassionate grounds.\

GETTING TO YES AT THE IAD
Your client has a much higher likelihood of “getting to yes” if he or she has an appeal to the IAD. This is not an appeal in the strict sense, where the party must show an error on the part of the visa officer. An appeal to the IAD is a hearing de novo where new evidence can be brought forward and the parties can testify in person. In most cases, this is a far better venue than a cramped interview room with a cynical and jaded visa officer.

Grounds for appeal
In addition, the grounds for appeal include humanitarian and compassionate factors, not just legal errors or breaches of natural justice. Those humanitarian and compassionate factors specifically include the best interests of any child involved in the application. It is also possible that your client’s appeal could be resolved without requiring a full hearing through an Alternative Dispute Resolution (“ADR”) conference or even earlier in some cases where there is strong documentary evidence.

Types of refusals dealt with by IAD
In most cases, when I have been approached by clients to undertake an appeal to the IAD, all that the client has is a refusal letter with the brief reasons for refusal provided by the visa officer. In the case of a sponsored spousal application, there are a number of reasons that may have resulted in the refusal. The visa officer may have determined that the relationship was not genuine. The sponsored spouse may have been refused

---

4 In De Guzman v. Canada (MCI), 2004 FC 1276, the Federal Court upheld this provision on the basis that the family member could apply under subsection 25(1) to be permitted to come to Canada on humanitarian and compassionate grounds.


6IRPA, s.67
because of a criminal conviction. In the case where a Canadian citizen or permanent resident has sponsored his parents or grandparents for immigration, the most common reasons for refusal are medical grounds or a determination that the sponsor does not meet the financial eligibility requirements.

THE PROCESS BEFORE THE IAD

Notice of Appeal
There is usually no reason not to file a Notice of Appeal as soon as possible. There is no cost to file an appeal and an appeal can be easily withdrawn if for some reason the client decides not to proceed. The IAD is taking over a year to deal with appeals, so the sooner the matter is started the better.

Preparation of the Appeal Record
After a Notice of Appeal is filed, the Canada Border Services Agency (“CBSA”), must provide the appeal record within four months. This is usually the visa office’s entire file.

Preliminary issues
Even before the appeal record is provided, the IAD may require that you provide documentary evidence to deal with an outstanding issue. If one of the reasons that a sponsored spouse’s application was refused was that the marriage itself was not valid, the IAD may require that this be resolved at an early stage with written submissions and documentary evidence. If your client is unable to prove that the marriage is legally valid, the IAD could dismiss the appeal without even holding an oral hearing. Normally this would not be an issue that would require the assessment of credibility. If the marriage is not legally valid, the sponsored person is not a member of the family class and there would be no jurisdiction for the IAD to consider humanitarian and compassionate factors.

The IAD will also deal with its jurisdiction to consider an appeal with respect to a person described in s.117(9)(d) of IRPA at an early stage in the process.

Alternative Dispute Resolution
The IAD may also require your client to attend an ADR conference. At this point, my

---

7 Immigration Appeal Division Rules, s. 4

8 IRPA, s.65
experience with ADR conferences has been mostly negative when the matter involved a refusal of a sponsored spousal application that was based on the genuineness of the marriage. Only the appellant sponsor is present at the ADR conference to be questioned by the representative of the Minister. In most of these cases, the visa officer would have refused the sponsored spouse because he or she did not believe that person at the interview. The Minister’s representative in every case I have dealt with was not convinced by questioning the appellant alone that the marriage was genuine, even when further compelling documentary evidence was provided. The ADR proved to be a waste of time and only resulted in further delaying the resolution of the appeal. On the other hand, in a recent case involving the medical refusal of a widowed parent who had been sponsored by her son, the Minister’s representative was convinced to allow the appeal based on the strong humanitarian and compassionate factors. There were no issues of credibility.

Preventing for the Hearing
By far the majority of my cases in the IAD have been cases involving the genuineness of the marriage between the sponsor and his or her immigrant applicant spouse. Visa officers at offices like the High Commission in New Delhi are stuck in the past and are assessing the credibility of applications based on customs that are no longer being followed strictly. These officers are also highly cynical and your client’s spouse has a limited opportunity to show the officer that the relationship is genuine. It also does not help that these clients are also either unrepresented at that stage or have been poorly represented by a local consultant or agent.

Prior to the hearing in the IAD, it is important to provide good documentary evidence of the relationship between the sponsor and his or her spouse. It is often a year or more between the refusal and the hearing of the appeal. This is lots of time for a sponsor to visit her spouse again and provide new photographic evidence of the relationship. If you can convince your clients to stop using calling cards, you may also be able to provide evidence of telephone communication since the refusal.

De Novo hearing
The key to “getting to yes” at an IAD hearing in a marriage case is to properly prepare both the sponsor and his or her spouse to testify at the hearing. While I am not suggesting that you coach the witnesses, it is important that you question them in detail about their relationship. This is a hearing de novo. If the applicant spouse exhibited a
lack of knowledge of his sponsor at the interview with the visa officer, if the applicant spouse gives straightforward, candid testimony at the hearing, his or her performance at the interview should not matter.

**Orders of the IAD**

If you are successful at an IAD hearing, the only order that the member can make is an order allowing the appeal. The member has no jurisdiction to add terms or conditions to the order. In particular, the IAD has no authority to order that the visa office redetermine the case in a timely matter. Not only will it take several months for the appeal file to be returned to the visa office, it is not likely to receive the priority it deserves. If more than six months passes before the application is completed and the visa office is not responding to your specific case inquiry, there is a complaint procedure suggested by Citizenship and Immigration Canada. If the visa office has taken over a year to reconsider the case, it is time to consider an application for mandamus.

**Res Judicata**

If your client loses and IAD case, it is possible for the client to file another sponsorship application, but the issue of res judicata is going to arise. Your client would need to face this as a preliminary issue if a second appeal is filed from another refusal. The issue is going to be whether there are exceptional circumstances in your client’s case or, in other words, decisive fresh evidence which could not have been adduced at the earlier proceeding by the exercise of reasonable diligence.

**GETTING TO YES IN THE FEDERAL COURT**

If your client is not a sponsor or a permanent resident who has not met his or her residency obligation, your client’s only option is to apply for leave to apply for judicial

---

9 IRPA, s.66

10 E-mail Case Management Branch at case-review-im-enquiry@cic.gc.ca and copy the responsible director for the geographic region by e-mail (preferred) or by fax to (613) 957-5802:
- Africa-Middle East: Nat-Africa-Middle-Ea@cic.gc.ca
- Europe: Nat-Europe@cic.gc.ca
- Americas: Nat-Americas@cic.gc.ca
- Asia-Pacific: Nat-Asia-Pacific@cic.gc.ca

11 For the requirements to obtain an order of mandamus, see *Apotex Inc. v. Canada (A.G.)*, [1994] 1 F.C. 742 (C.A.)
review in the Federal Court.\textsuperscript{12} Your deadline for filing this leave application is only 15 days for decisions that are made by immigration officers in Canada. You have 60 days to file in decisions of visa officers overseas.\textsuperscript{13} My experience with decisions from immigration officers in Canada on humanitarian and compassionate applications is that they are quite detailed whether they come from a PRRA officer or an immigration officer. Overseas decisions are the exact opposite. There is usually insufficient information in them to understand the reason for the refusal and it is necessary to state in application for leave that written reasons have not been provided. The visa office will provide the CAIPS notes made by the visa officer as the reasons for decision. The Federal Court has found that the CAIPS notes are acceptable to constitute reasons, but are not admissible for any other purpose.\textsuperscript{14} If you have received reasons for the decision, you have 30 days to perfect your record for the leave application from the date you filed the application. If you have not received the reasons, your have 30 days from the date your receive the reasons.\textsuperscript{15}

While it would be an unusual case to advise your client not to pursue an appeal to the Immigration Appeal Division, it is another situation altogether when you are advising clients to pursue a leave application to the Federal Court. Federal Court applications can be time consuming and difficult. They are expensive for your clients.

\textbf{Leave required}

From my experience, it is not getting leave that is difficult. According to the statistics published by the Federal Court for 2008, leave was granted in 25\% of the proceedings brought in non-refugee applications. This is actually higher than I thought it would be. This number also does not reflect the fact that many applications are commenced but not perfected by the applicant.

\begin{footnotesize}
\begin{enumerate}
\item IRPA, s.72(1)
\item IRPA, s.72(2)(b)
\item Du v. Canada (Minister of Citizenship and Immigration) (2001), 15 Imm. L.R. (3d) 64 (F.C.T.D.)
\item Technically speaking, 40 days from the date the CAIPS notes were sent by the visa office. See the \textit{Federal Court Immigration and Refugee Protection Rules}, ss. 10(1) and 9(4).
\end{enumerate}
\end{footnotesize}
### Statistics for the Federal Court for 2008

<table>
<thead>
<tr>
<th>Subject Matter</th>
<th>Proceedings Commenced</th>
<th>Total Dispositions</th>
<th>Pending 31-12-08</th>
<th>Applications for Leave Granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immigration Appl. for Leave and Judicial Review: Refugee</td>
<td>3542</td>
<td>3501</td>
<td>1347</td>
<td>575 (16.25%)</td>
</tr>
<tr>
<td>Immigration Appl for Leave and Judicial Review: Non-Refugee</td>
<td>2142</td>
<td>2143</td>
<td>879</td>
<td>538 (25%)</td>
</tr>
<tr>
<td><strong>Total Immigration Applications for Leave and Judicial Review</strong></td>
<td>5684*</td>
<td>5644</td>
<td>2226</td>
<td>1113</td>
</tr>
</tbody>
</table>

*74% of all proceedings commenced in the Federal Court

### Serious issue to be tried

The test for granting leave is only whether there is a serious issue to be tried. The much more difficult task is convincing the Federal Court to intervene in a decision made by an officer of the federal government. In deciding whether to pursue an application to the Federal Court it is important to have a good understanding of the grounds on which the Federal Court can intervene to overturn a decision of an immigration officer or visa officer. One of the biggest problems you are facing when considering an application for leave is that many of the decisions made by immigration officers and visa officers are highly discretionary. The Federal Court shows a high level of deference to members of the Immigration and Refugee Board and any officer who is using his or her own expertise in the decision making process.

### Standard of review

In considering whether to advise your client to seek leave to apply for judicial review, you must consider the standard of review that the Federal Court will apply. The Supreme Court of Canada in *Dunsmuir* has at last rid us of the artificial distinction between the patent unreasonableness standard and the unreasonableness *simpliciter* standard.

---

16.1 (4) The Federal Court may grant relief under subsection (3) if it is satisfied that 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.

*Dunsmuir v. New Brunswick*, 2008 1 S.C.R. 190
According to the Supreme Court of Canada, “reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

At the same time, the Supreme Court of Canada emphasized in its decision the requirement of showing deference to administrative decision makers:

In short, deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system.

When you are bringing forward issues involving questions of law or breaches of natural justice, the standard of correctness applies and there is no need for the Court to show any deference to the decision maker:

As important as it is that courts have a proper understanding of reasonableness review as a deferential standard, it is also without question that the standard of correctness must be maintained in respect of jurisdictional and some other questions of law. This promotes just decisions and avoids inconsistent and unauthorized application of law. When applying the correctness standard, a reviewing court will not show deference to the decision maker’s reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal’s decision was correct.

GROUNDs FOR JUDICIAL REVIEW IN THE FEDERAL COURT

This paper is focussed on applications that are made by visa officers overseas and immigration officers in Canada. The kinds of decisions we are looking at are things like a point assessment made by a visa officer in determining whether an immigrant meets the definition of a skilled worker. A visa officer could also have refused your client because

---

18 Dunsmuir v. New Brunswick, 2008 1 S.C.R. 190, at paragraph 47
19 Dunsmuir v. New Brunswick, 2008 1 S.C.R. 190, at paragraph 49
20 Dunsmuir v. New Brunswick, 2008 1 S.C.R. 190, at paragraph 50
he or she is not satisfied that your client meets the definition of a business immigrant. These assessments could be based just on the material provided by your client or on a combination of written material and oral statements made at an interview. The visa officer could have made negative findings of credibility that motivated the negative decision. You should be aware before seeking leave at the Federal Court of the standard that the Court will be applying in the judicial review proceeding.

**Credibility**

In considering a judicial review, you could be dealing with findings of an immigration officer, visa officer or a member of the IAD that your client was not credible or that his statements or testimony was implausible. Issues of implausibility and credibility are generally reviewed on the reasonableness standard.\(^ {21} \) Convincing the Federal Court to overturn an IAD decision that is based solely on credibility is a difficult task, especially considering that the Federal Court will show the IAD, as an expert administrative tribunal, the highest level of deference.

In reviewing a negative decision by an officer or a board member, you want to be looking carefully to see if the officer or member has considered all of the important documentary evidence before him or her. Failure to consider important relevant evidence is a legal error and is subject to the correctness standard of review.\(^ {22} \)

**Reasonableness**

If you are looking at reviewing a decision of an immigration officer or a visa officer finding that there are insufficient grounds to allow a humanitarian and compassionate application, the standard that the Court will apply is reasonableness. The Court will consider that the question at issue falls within the expertise of the officer and as a result deference is owed and the Court should not intervene unless the officer's decision does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."\(^ {23} \)

\(^ {21} \) **Uluk v. Canada (M.C.I.),** 2009 FC 122; **Bal v. Canada (M.C.I.),** 2008 FC 1178

\(^ {22} \) **Ozdemir v. Canada (M.C.I.),** 2001 FCA 331 at paragraph 7

\(^ {23} \) **Dunsmuir v. New Brunswick,** 2008 1 S.C.R. 190 at paragraph 47
Humanitarian and compassionate decisions are highly discretionary and they are difficult to overturn even when there is a child involved. The Federal Court recently addressed this test in *Avila v. Canada (M.C.I.)* 2009 FC 13:

The appropriate standard of review of a decision on an H & C application is reasonableness with respect to matters of fact or mixed fact and law. Consequently, the decision must be justifiable, transparent and intelligible within the decision-making process (*Dunsmuir v. New Brunswick*, 2008 SCC 9). It should be vacated only if it is perverse, capricious, not based on the evidence or based on an important mischaracterization of material facts. But, on the other hand, a breach of procedural fairness is cause to set the resultant decision aside, unless there is no possible way that another outcome could have been reached.

Given the discretionary nature of H & C decisions, considerable deference must be accorded to such decisions. Intervention is therefore only warranted if the decision cannot withstand a somewhat probing examination (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817).

A visa officer’s assessment of points in a skilled worker case is also a factual finding and the standard of review is reasonableness. The Court will also show deference to the officer’s findings of facts. In these cases, there is a wide range of possible reasonable outcomes.24

### Natural Justice

Issues involving a breach of natural justice and fairness will always be dealt with by the Federal Court by the correctness standard. At the same time, the Federal Court has emphasized over the years that there are different levels of fairness owed to our clients depending on the circumstances. People who are applying to come to Canada as immigrants have the responsibility to show the visa officer that they qualify as immigrants in the particular category in which they are applying. There are a number of types of overseas case that will attract a higher standard of procedural fairness. A very high standard of procedural fairness is to be applied in the application of section 40(1) where a foreign national is determined inadmissible for misrepresentation and where the issue involves an examination with respect to section 4 of the IRPA regulations, which is the bad faith marriage provision.25

---

24 *Rodrigues v. Canada (M.C.I.)* 2009 FC 111, at paragraph 7

25 *Chen v. Canada (M.C.I.)* 2008 FC 1227
In any case involving a breach of natural justice, the Court will not be required to show deference to the decision maker:

Accordingly, when considering an allegation of a denial of natural justice, a court need not engage in an assessment of the appropriate standard of review. Rather, the court is required to evaluate whether the rules of procedural fairness have been adhered to. The court does this by assessing the specific circumstances giving rise to the allegation and by determining what procedures and safeguards were required in those circumstances in order to comply with the duty to act fairly. If the court finds that the conduct of the decision-maker has breached natural justice or procedural fairness, no deference is owed and the court will set aside the decision of the tribunal.\textsuperscript{26}

The failure to provide adequate reasons for decision will always be a ground for judicial review. Reasons must be sufficient to enable the parties to assess possible grounds for judicial review and to allow the Court to determine whether the decision-maker erred.\textsuperscript{27}

As I indicated earlier, in overseas cases, the reasons for decision will usually be brief and will be supplemented by the CAIPS notes. The Federal Court has recently held that affidavit evidence provided by the visa officer after the fact will not usually constitute reasons for decision:

While there may be instances where the reasons for the decision are properly contained in not only the decision letter and the CAIPS notes but also in an affidavit (see Hayama v. Canada (Minister of Citizenship and Immigration), [2003] F.C.J. No. 1642, 2003 FC 1305), the Court is concerned when the evidence submitted post-filing of an application for judicial review attempts to fill in gaps in the record of decision on the very points in issue and does so by adding major elements to the Record. The attempt to supplement the Record must be approached with caution when attempted by either an applicant or a respondent. If admissible, the Court must assess its weight. In this case, greater weight is given to the pre-application record than to the affidavit.\textsuperscript{28}

If the visa officer or immigration officer fails to give your client an opportunity to respond to

\textsuperscript{26} Jin v. Canada (M.C.I.) 2008 FC 1129

\textsuperscript{27} Via Rail Canada Inc. v. Lemonde, [2001] 2 F.C. 25 at para. 19 (C.A.)

\textsuperscript{28} Sklyar v. Canada (M.C.I.) 2008 FC 1226
extrinsic evidence that the officer has considered, this will also constitute a breach of the duty of fairness.  

**Failure to consider material evidence**

The other ground for judicial review that will attract a standard of correctness rather than reasonableness is the failure on the part of the officer to consider material evidence that was before him or her. The standard response by the Minister of Citizenship and Immigration is applications that are based on allegations that the officer failed to consider material evidence is to argue that the you and your client are asking the Court to re-weigh the evidence. Your response is simply that the visa officer could not have weighed that evidence if the record shows that he or she ignore it. It is also not enough for the visa officer to simply say that he or she has considered all of the evidence:

However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": Bains v. Canada (Minister of Employment and Immigration) (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.  

**ORDERS OF THE FEDERAL COURT**

It is important to keep in mind when advising your clients about an application for leave and for judicial review that the Court cannot make the positive decision that your client wants. The Federal Court's jurisdiction is limited to overturning an officer’s decision and referring it back to another officer for reconsideration. The Federal Court can make

---

29 Liu v. Canada (Minister of Citizenship and Immigration)  2008 FC 1253


31 18.1 (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.
specific directions to the new officer in its order if you are successful. You should make sure to advise the Court of any specific directions that you are seeking.

Consent orders
If you have prepared a strong case and leave has been granted, the Department of Justice may be able to obtain instructions from their client to consent to the application for judicial review. Usually, if the Minister is willing to consent, the Department of Justice lawyer will request that you discontinue your client proceeding in return for an agreement from the Minister to remit the matter back to a different officer for reconsideration. While this may be the most expeditious way to deal with the matter in some cases, it is my view that it is only appropriate to discontinue an application for judicial review if your client has instructed you not to proceed. The appropriate way to deal with an agreement to consent is to have the Department of Justice lawyer prepare a consent order. The Court will expect that the grounds for allowing the matter by consent be set out in the materials presented with the consent order.

Costs
In immigration matters, the Federal Court will not order costs to either party except if there are special reasons. One exception to this is a case where the immigration department has not landed someone in a reasonable amount of time and the person was forced to incur the cost of bringing a mandamus application.

\[32\] Federal Courts Immigration and Refugee Protection Rules, s.22
\[33\] Sellathurai v. Canada (M.C.I.), 2008 FC 604, at paragraph 13