



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

June 25, 2018

Via email: Paul.Crampton@fct-cf.ca

The Honourable Paul S. Crampton
Chief Justice of the Federal Court
90 Sparks Street
Ottawa, ON K1A 0H9

Dear Chief Justice Crampton:

Re: Notice on Scheduling Practice for the Hearing of Applications

The Canadian Bar Association's Immigration Law Section (CBA Section) is pleased to comment on the *Notice on the Scheduling Practice for the Hearing of Applications* dated September 13, 2017.¹

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Immigration Law Section comprises over 1,000 lawyers, practicing all aspects of immigration law and delivering professional advice and representation in the Canadian immigration system to thousands of individuals in Canada and abroad.

At the December 2017 Federal Court Bench and Bar Committee meeting, the CBA expressed concern that the Notice does not recognize previously scheduled matters before an administrative tribunal as a valid basis for indicating non-availability with the Federal Courts. The major concern was on the impact of postponing a hearing at the Immigration Appeal Division (IAD) of the Immigration and Refugee Board of Canada. If a Federal Court hearing is scheduled on the same day of a previously scheduled IAD hearing, counsel must request a postponement from the IAD. This forces an individual to wait longer, exacerbating an already backlogged process.

The Court requested additional information on wait times and the impact of postponements at the IAD. We have gathered relevant data.

In 2017-2018, the average processing time for an appeal at the IAD was over 16 months.² The Special Advisor to the Deputy Chairperson of the IAD reports that postponements add five to six

¹ Available [online](#).

² See Appendix A for more details.

months to the decision process. From 2014 to 2018, a hearing that was postponed took, on average, 30% to 35% longer than an appeal where there was no postponement.³

We request that a previously scheduled hearing before the IAD be considered a date of non-availability of counsel for the Federal Court. In other practice areas, another lawyer may be able to take over a file when a Federal Court hearing falls on the same day as a hearing before an administrative tribunal. However, many immigration lawyers are sole practitioners or work in small firms and there is no other lawyer available to take on the file.

We understand there are many occasions where the Court's schedule ought to take precedence. However, we believe the unique context of the IAD merits a different approach. To postpone an IAD hearing could have severe consequences for individuals. For example, postponing a sponsorship appeal at the IAD could continue the separation of a parent from their children.

We appreciate the opportunity to comment on the Notice. We trust that our comments are helpful and would be pleased to discuss further.

Yours truly,

(original letter signed by Marc-André O'Rourke for Barbara Jo Caruso)

Barbara Jo Caruso
Chair, Immigration Law Section

Cc: J. Paul M. Harquail
Chair, Federal Courts Bench and Bar Liaison Committee
pharquail@stewartmckelvey.com

Daniel Gosselin, Chief Administrator
Courts Administration Service
daniel.gosselin@cas-satj.gc.ca

Andrew Baumberg
Legal Counsel, Federal Court
andrew.baumberg@fct-cf.gc.ca

³ Information provided by the Special Advisor to the Deputy Chairperson of the Immigration Appeal Division.

APPENDIX A*Immigration Appeal Division (IAD) Average Processing Times⁴ (in months)*

	Central Region	Eastern Region	Western Region	National
2014-2015	16.8	21.7	10.4	16.2
2015-2016	17.1	26.9	10.9	17.8
2016-2017	16.0	25.9	9.7	17.3
2017-2018	15.6	24.6	9.1	16.8

[Note: These average processing times include appeals that were withdrawn, abandoned, settled, addressed through early resolution, and that ultimately proceeded to a hearing. In all these outcomes (except where a hearing was held), the appeal would terminate prematurely (and bring the average processing time down). Matters that proceeded to a hearing - which concerns our request to the Federal Court- would substantially exceed average processing times because the other outcomes, which lead to much faster resolution, are also accounted for in these processing times.]

⁴ Information provided by the Special Advisor to the Deputy Chairperson.