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January 28, 2010

VIA REGULAR MAIL

Federal Court
90 Elgin Street
Ottawa, Ontario
K1A 0H9

Attn: The Honourable Chief Justice Lutfy
And to: The Honourable Madame Justice Snider

Dear Sir/Madam:

Re: Time allocations within Orders granting leave

On behalf of the Canadian Bar Association and the Department of Justice we thank the Federal Court for this opportunity to make a formal submission regarding time allocations within Orders granting leave.

Sampling

We jointly reviewed four months of Orders granting leave in arriving at our recommendation. It appears the Federal Court has utilized a template in setting down timeframes within these Orders. The range on the low end ran from 59 days to as high as 122 days between the date of the Order and the date of the hearing. The average was 86.7 days. The other averages and ranges were as follows:

- The production of the Certified Court Tribunal (CTR) - 20-21 days, average 21 days
- To prepare & file Applicant's Further Affidavit - 7-13 days, average 11 days
- To prepare & file Respondent's Further Affidavit - 7-8 days, average 7 days
- To conduct cross-examinations 10-12 days, average 11 days
- To prepare & file Applicant's Further Memorandum - 8-12 days, average 10 days
- To prepare & file Respondent's Further Memorandum - 8-11 days, average 9 days
- To file transcripts – 0-7 days, average 5 days
- Time between filing of the transcripts and hearing date – 3-16 days, average 14 days

Canada

Key Considerations

In developing our recommendation we took into account the Court's need to maintain some flexibility in scheduling. We thus recommend a time range that we hope acknowledges this requirement. We also considered that some time was lost in awaiting the filing of transcripts and hearing dates that could be more usefully allocated to other steps in the timeline while still recognizing the need for realistic timeframes for purposes of preparation and cost. Further still, we noticed that the great disparity in time ranges at certain steps (7-13, 0-7, and 3-16) could be minimized with a more standardized timeline. Lastly we considered if certain cases like Refugee Protection Division and Immigration Appeal Division matters, where cross-examination is rarely if ever required, should be selected for more expeditious hearings at the low end range of the spectrum. Currently it does not appear that this is factored into the setting down of these matters.

Recommendation

Please consider this a joint recommendation from the Department of Justice and the Canadian Bar Association. We believe that it would be in the best interests of all stakeholders and a better use of the Court's resources if there was even more certainty in the timelines for various steps in the process. To this end we make the following recommendation:

- The production of the CTR - **20-21** days (no change)
- To prepare & file Applicant's Further Affidavit - **9-11** days
- To prepare & file Respondent's Further Affidavit - **9-11** days
- To conduct cross-examinations **12-13** days
- To prepare & file Applicant's Further Memorandum and transcript, if any, - **10-12** days
- To prepare & file Respondent's Further Memorandum and transcript, if any, - **10-12** days
- To file transcripts – **0** days,
- Time between filing of the transcripts and hearing date – **10** days

We recommend that the transcripts be filed on the same date as the Further Memorandums are filed by the respective parties. There is precedent in this regard (see IMM-1109-09 for example). Also, a ten day period between the close of pleadings and preparation for the case seems reasonable subject to further direction from the Court as we can only speak to counsels' scheduling in this regard. In total the range between the date of the Order and the hearing would run from **80** days on the low end to **90** days on the high end allowing the Court to maintain some flexibility while achieving a better balance between the parties in allocation of days at various steps throughout the schedule.

We thank you for your consideration.

Yours truly,



Diane Dagenais
Regional Deputy Director and Senior Counsel
Immigration Law Division



Mario D. Bellissimo, C.S.
CBA Federal Court Liaison