



September 17, 2013

Via email: [Sylvia.Mackenzie@fct-cf.gc.ca](mailto:Sylvia.Mackenzie@fct-cf.gc.ca)

Sylvia MacKenzie  
Senior Counsel  
Federal Court  
Ottawa, ON K1A 0H9

Dear Ms. MacKenzie:

**Re: Procedural Protocol – Allegations Against Counsel**

I am writing on behalf of the Canadian Bar Association members of the Bench and Bar Liaison Committee (Immigration and Refugee Law), in response to the August 9, 2013 letter from the Department of Justice, proposing revisions to our draft, “Procedural Protocol Re: Allegations Against Counsel in Citizenship, Immigration and Protected Person Cases before the Federal Court.”

We are not opposed to the changes to section 2(v.) (response by former counsel) and section 3(i.) (provision to former counsel of order granting leave or setting matter down for hearing).

We have some concerns about the additional procedural steps proposed by the Department of Justice for current and former counsel.

- section 2(vi.): no rationale is given for requiring current counsel to make a formal R. 109 or R. 369 application, complete with motion record and affidavits, to relay the communication from former counsel. The original draft wording anticipates filing additional submissions (without a formal motion) in a set time. In our view, it is an onerous and unnecessary complication to ask current counsel to make a formal application.
- section 3(ii.): this would impose an onus on former counsel to make a formal application to intervene (R.109) or R. 369 motion to be heard by the Court. The Court has made these determinations in the past without a formal motion, affidavits, memorandum, presumably using its plenary jurisdiction. Again, the existing practice seems more straightforward and does not create unnecessary impediments for former counsel to participate if they wish.

As well, the Department of Justice suggests omitting section 3(iii.)(identifying the basis on which the Court will make its ruling). We believe it should remain in the Protocol as it provides clarity on how the Court will proceed.

Thank you for the opportunity, once again, to provide our input.

Yours truly,

*(original signed by Kerri Froc for Mario Bellissimo)*

Mario Bellissimo  
Chair, National Immigration Law Section

cc. Deborah Drukarsh, Department of Justice