



THE CANADIAN
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July 2, 2024

Via email: caroline perrier@cas-satj.gc.ca

Federal Courts Rules Committee
Federal Courts of Canada
60 Queen Street
Ottawa ON K1P 5Y7

Dear Federal Courts Rules Committee:

Re: Federal Courts Rules - 2024 Global Review

I am writing on behalf of the Immigration Law Section, the Intellectual Property Law Section and the OBA Class Action Section of the Canadian Bar Association (CBA Sections) in response to the Federal Courts Rules Committee conduct of a global review of the *Federal Courts Rules* (the Rules) The Sub-Committee invited comments on its [proposals](#), as well as any other proposals for changes to the Rules. Input is to be provided by completing this [form](#).

The CBA is a national association of 40,000 lawyers, Québec notaries, law teachers and students, with a mandate to promote improvements in the law and the administration of justice. The CBA Immigration Law Section comprises lawyers with an in-depth knowledge of citizenship and immigration law issues, including legislative changes, administration and enforcement. The CBA Intellectual Property Law Section deals with law and practice relating to all forms of ownership, licensing, transfer and protection of intellectual property and related property rights, including patents, trademarks, copyright, industrial designs, plant breeders' rights, as well as trade secrets. The OBA is the largest voluntary legal organization in Ontario, representing lawyers, judges, law professors and students, which assists government and other decision-makers with legislative and policy initiatives in the interest of the profession and public. The OBA Section includes lawyers who are leading experts in class actions.

The Survey questions and answers from the different CBA Sections follow.

1. With respect to Issue 1 of the Invitation to participate, should the Rules be modernized to more fully address electronic service?

The CBA's Intellectual Property Law Section is concerned that requiring parties to provide an email address with each filing does not favour access to justice, particularly for self-represented litigants. Not everyone has an email address. Furthermore, some have an email address but do not have regular or sufficient access to the internet or to email.

In addition, electronic service is challenging when the email address(es) or domain name(s) of the served document are unknown to the recipient(s) email address(es) or domain name(s) and the sender's email is potentially blocked and/or segregated into a "junk" folder by spam filters.

If electronic service becomes the default requirement, the Rules should specify that it is the default between counsel and provide for either (i) self-represented litigants to be exempt from such service unless they consent to same; or (ii) an exception in cases where parties can demonstrate that they have no email address or no regular or sufficient access to the internet or to email. The burden contemplated in option (ii) should be low, so that the Court Registry cannot, without good reason, refuse a document for filing on this basis.

The CBA Section is also concerned with how the Court can maintain confidentiality of documents filed under seal.

In sum, the CBA Section welcomes electronic service with the caveats described above, particularly if it will help the Court create a fully functional electronic Court docket where these documents can be downloaded by interested parties.

2. With respect to Issue 1 of the Invitation to participate, should the Rules be modernized by standardizing the use of electronic filing?

Similar to the first discussion point above, the CBA Intellectual Property Law Section is concerned about access to justice should electronic filing of documents become the default. The 'exceptional cases' exception should make it clear that if a party is a self-represented litigant and/or does not have an email address, or sufficient access to the internet or to email, they can file paper copies by way of hand-delivery, mail and/or fax.

Also, the CBA Section is concerned with how the Court will maintain confidentiality of documents filed under seal.

3. With respect to Issue 2 of the Invitation to participate, should the Rules be amended to eliminate outdated practices as described? Are there other anachronisms in the Rules that should be addressed?

Remove references to anachronistic practices and technology

The CBA Intellectual Property agrees that faxing may be removed, and notes that most faxes are now sent electronically.

Regarding the locked boxes, the CBA Section is concerned that their removal will result in an access to justice issue. Those who do not have an email address or regular access to the internet or their email, would also not have access to this method of giving feedback to the Court. In addition, removing references to locked boxes, in turn, prevents this feedback to be submitted anonymously.

The CBA Section agrees that word count rather than number of pages results in documents being more readable by the judges. We suggest that no alterations be made to font, margins, and spacing requirements. We understand that the word count should include all footnotes to capture those instances where arguments are made in the footnote instead of in the body of the document. We welcome consultations on determining the appropriate 'conversion' from pages to number of words.

The CBA Section agrees with changing 'physical copies' to 'electronic copies', if the public maintains an ability to access the non-confidential portions of court files in physical format for the same reasons given where such persons do not have consistent or any access to the internet. We accordingly propose Rule 26

be amended to provide for primarily, an explicit electronic means through which members of the public can make requests for electronic copies of court documents for inspection, while maintaining an ability to obtain physical copies.

4. With respect to Issue 3 of the Invitation to participate, should the Rules be amended to incorporate important elements from the Practice Directions?

a) to address more fully address the filing of confidential documents?

The CBA Immigration Law Section suggests the following with respect to confidential documents:

The risks of making pleadings public online in Immigration matters

The Immigration bar respects the open court principle, and thanks the Federal Courts for this opportunity to provide supplemental submissions on this topic to improve its administration of Justice.

Immigration law is distinct from most other areas of federal law, as the subject matter of immigration proceedings is always personal, and because the parties to the proceeding do not control all materials that form the Court's records. Given these two considerations, we first address those documents that compose the Court's records, then address what limitations we propose for access to those documents.

The Content of the Court's Record

Immigration proceedings have four distinct parties adding to the Court's record: the Applicant, Respondent, Tribunal, and the Court. Individuals before the Court, with or without representation, have some capacity to control the written materials they file to the Court. They cannot control what is filed by the opposing party, nor do they have any control over the materials found within the Certified Tribunal Record (CTR).

1. Pleadings, Affidavits & Exhibits

There are two parties before the Court. While the individual before the Court may seek to preserve their privacy, security, and dignity, there is currently no protocol nor policy to limit nor restrict what the opposing party (here the Department of Justice) would include in their materials.

Moreover, curtailing pleadings, affidavits, and exhibits to protect privacy, security, and dignity, will be a barrier to access to justice. Facts are important to most immigration proceedings, such as:

- Citizenship
- Places of residence
- Age
- Religion
- Political opinion
- Membership in government or other organizations
- Military service
- Sexual orientation
- Gender
- Civil status

- Existence of children, and their ages and locations
- Employment history
- Education history
- Address history
- Financial status, including net worth, assets, bank and tax records
- Medical records, including evidence of trauma, torture, medical conditions, and illnesses
- Mental health records, including diagnoses and prognoses

It is not possible to discuss a refugee claim, for example, without many of these facts being set forth. However, this is not just about refugee law, as it is not possible to discuss a visa, student, work permit, or citizenship refusals without reference to financial documents, employment and educational histories, places of residence, etc either.

2. Certified Tribunal Record (CTR)

Assuming it is possible to present the Applicant and Respondent's positions without reference to key facts, neither party control CTR content. There are very good reasons not to alter the CTR and to offer it to both parties and the Court in its complete and unaltered form, as there is no rule or policy applicable to all files regarding what should be removed. There are also costs associated with this review, should such a burden be imposed. While removal of identity documents in many cases would be ideal, identity documents may be at the core of arguments on a refugee claim: proving citizenship, providing address history, religious affiliation, etc. Similarly, in misrepresentation cases and reviews of individuals in immigration detention, identity documents may be of central importance.

While it is possible to file a motion for confidentiality or partial redaction of documents, the outcome is not guaranteed. This process can be onerous and will have a financial impact on the individual before the court as well as on other parties. A significant number of individuals seeking judicial review in the immigration context are of limited financial means or are assisted by legal aid with restricted hours for the provision of legal services. The risk to reputation is high and this is something that can also curtail access to justice.

3. Conclusion

The CBA Section continues to strongly recommend that Pleadings, Affidavits, Exhibits, and the CTR not form part of the Court record that is to become publicly available online. There are no means to control or restrict the contents of these documents to protect the identity (including identity theft), dignity, and safety of applicants and their dependents, while also advocating for their best interests and ensuring that all parties have full disclosure.

Release of Online Court Records

The immigration bar is relieved that the Federal Courts are not making tribunal records available online. To the extent that all presently included materials in the Court docket are to be made available in electronic format, the CBA Section reiterates its recommendations outlined in the December 2019 submission but goes further in its recommendation given new case law and research and the increasing availability of Artificial Intelligence (AI) and other technologies useful for data mining. This includes a continued request for use of "non-restricted," "restricted," and "confidential" labels, and a need for those accessing records to both register an account and for access to "restricted" records to provide a rationale for the request.

This categorization and limitation on access is particularly important given Canada's many and recent investigations into foreign interference and the significant risks that are placed on litigants overseas or to be returned overseas, their family members, and those that have been witnesses in their immigration proceedings. Therefore, it is recommended that this new system be implemented for both online and paper-based records. In this respect, the CBA Section agrees and approves a nominal fee for access to these records to offset the costs of producing paper copies and reviewing requests for restricted records.

The CBA Section seeks caution, since seemingly legitimate requests by journalists can also jeopardize the security and dignity of those coming before the Court. The Premium Times of Nigeria produced an exposé on Nigerians seeking asylum in Canada "INVESTIGATION: Canada Rush: What desperate Nigerian asylum seekers are telling Canada about Nigeria," 4 January 2022.¹ The journalist accessed 300 federal court files and reviewed their outcomes in Canada, and in several key examples named the individuals involved including their children and their ages, their place of origin within Nigeria, and grounds for seeking protection.

While it is not only refugee claimants whose security, identity and dignity are at risk, their concerns are among the most obvious; the confidentiality of refugee claims is not only intrinsic to all levels of the Immigration and Refugee Board but is also protected by the United Nations. Aside from refugee claimants before the Court, there are children and other vulnerable persons; vulnerable mentally, physically, and financially.

While all courts in Canada are bound by the *Charter* and the open courts principle, there are provincial safeguards to ensure the safety and dignity of those coming before the courts. With respect, it is our strong position that access to justice should not be curtailed by fear of exposure of facts that are inherent to human dignity and risk security (sexual orientation, gender, political opinion, religion, medical circumstances, address, employment and education histories), and further that permit victimization as through identity theft and knowledge of property and assets.

Superior Courts Leadership in Protecting Confidential Information while Respecting the Open Court Principle

The highly specialized Superior Courts manage to balance the delicate line between protecting litigants' rights to privacy, security and dignity while respecting the open court principle.

Children and youth law, disability, and family law matters are handled *in camera*. The files are mostly sealed and anonymized in Superior Courts and files are not made available for the public online or at the court's registry. Publication bans are also issued to protect the rights of these vulnerable litigants. The Superior Courts better understand this as a critical issue and take these fundamental rights extremely seriously. By default, the right to privacy is granted and protected by the Court and no motion to protect these fundamental rights is required. Any lawyer or member of the public who wishes to attend those hearings needs a justification and authorization from the Court.

The Federal Courts are statutory Courts with an original mandate to ensure the better administration of the laws of Canada, new legislation expands the Court's jurisdiction into new domains. The Federal Courts whose subject-matter jurisdiction are vast are also nevertheless at the forefront of protecting these same fundamental rights.

Surprisingly, in contrast, before the Federal Courts, by default, everything is out in the open, including files dealing with children in youth protection, adoption, mental disability, informants, rape victims.

¹ INVESTIGATION: Canada Rush: What desperate Nigerian asylum seekers are telling Canada about Nigeria," 4 January 2022, [online](#).

Formal motions are required to have files sealed or heard in chambers. Pursuant to Rule 151 of the Federal Court Rules (FCR), on motion, the Court can order that all or part of the Court record be treated as confidential.

Furthermore, pursuant to Rule 8.1(2) of the Federal Courts Citizenship, Immigration and Refugee Protection Rules (FCCIRPR), a party to an application for leave can make a written request, in Form IR-5, that the Court make an order that all documents prepared by the Court and that can be made available to the public (for example, the online docket and any decision of the Court in the proceeding) be amended and redacted to the extent necessary to make the party's identity anonymous. The request is determined at the same time, and based on the same materials, as the application for leave. Litigants automatically lose their privacy rights, if this order is made when it is too late; they need to put their best foot forward to seek leave, yet in doing so private information becomes public if their request is denied.

Providing records online will remove the 'practical obscurity' that exists with physical file requests and will lead to greater breaches (see the article in Premium Times) permitting the dissemination of private and extremely sensitive information even further by making pleadings available online. If the Courts move in this direction, instead of emulating the Superior Courts leadership in this matter, the Federal Courts will further jeopardize the right to privacy of the most vulnerable litigants. It is critical that the Courts review its Rules, policies and procedures and stay current with the latest developments regarding the need to protect the right to privacy in this digital age and refrain from causing more harm.

Currently, publication bans issued in Superior courts for example in cases dealing with adoptions, children and youth matters or in family law or disability are not respected or upheld by Federal Courts. This creates a two-tier system in Canada.

Although access to a judicial review is less expensive at the Federal Court, it comes at the expense of litigants' rights to privacy. Litigants should expect to have the same rights to confidentiality, safety and dignity no matter before which court they appear. This difference in treatment is an important and central disincentive to litigants from Superior Courts to want to plead before the Federal Courts who seem unattractive on this front.

Litigants have the right to expect that their file be treated as confidential and remain sealed and heard in chambers in Superior Courts be treated the same way before Federal Courts. The Federal Courts could consider increasing their application fees, to have the means to ensure clients' right to privacy, safety and dignity are not compromised or unduly jeopardized.

In Quebec, a few decades ago, family law matters were open to the public. After much debate and lobbying, it was well understood by judiciary members and the Bar that too much private and sensitive personal and financial information was being disclosed in those files mainly for gossip or undue purposes. These files are now heard *in camera* and sealed to protect children and families' private affairs. The Superior Courts have it right: not all information is worthy of being made public in the interest of justice, the media should only have access to what is necessary.

People who are hospitalized because they are a threat to themselves and or to others have, due to a disability, the right to automatically seal their file and to have an *in camera* hearing as *per* Court of Appeal of Quebec caselaw and provincial legislation dealing with privacy and health laws to ensure the right to privacy and dignity pursuant to the *Charter* is upheld: *J.M. c. Hôpital Jean-Talon*². The Court understands that much harm can occur if this medical information is made public.

The CBA Section respectfully submits that consistency is required so that litigants get the same treatment in all Canadian Courts. Moving forward, the Federal Courts must follow the lead of other specialized courts dealing with fundamental rights to uphold the right to privacy, security and dignity of the person in accordance with ss. 1 and 2 of *Canadian Bill of Rights*. This Act protects our rights to life, security and equality before the law and the protection of the law in Canada including a fair hearing, without discrimination by reason of race, national origin, color, religion or sex.

The Ontario courts have recognized the need for balancing conflicting public interests of the open court principle and privacy rights.

In *Havergal College*³, Justice Myers reiterated that there is a public interest in protecting minor's privacy even where the minor is the accused. The circumstances favoured a publication ban over the open court principle. Similarly, in *Doe v Treasury Board (CBSA)*,⁴ which concerned a grievance for sexual harassment in the workplace. It was held that there is a continuing public interest to encourage victims to report sexual assault and there is no public benefit in having the victim's identity revealed in the decision. The Board concluded that the victim's name would be redacted and applicable in any future decision. The Supreme Court of Canada (SCC) in *Sherman Estates*⁵ found that there is an important public interest in protecting individuals from privacy violations that pose a serious risk to their dignity.

This is especially important in the immigration and refugee law context as court records often contain highly sensitive personal information relating to minors, a person's sexual orientation and gender, medical records, sexual violence, financial records, etc. To facilitate the ease of access of sensitive information will inevitably create a heightened risk to their personal safety especially when it falls into the wrong hands.

The CBA passed a resolution so the Federal Courts respect children's right to privacy. It is time the Federal Courts be at the forefront of the law for the better administration of justice.

Canada's ten provinces and three territories have legislation in place which automatically prohibits publication of any information identifying a child (access to children's records). Child protection hearings and appeals are closed to the public unless otherwise ordered by the court. For example, the *Child, Youth and Family Services Act* (CYFSA) in Ontario⁶ s. 87(4)⁷ provides for default private hearings, s. 87(8)⁸ prohibits identification of a child, and s. 87(9) prohibits identification of anyone charged with an offence under this part.

International Best Practices for Refugees

Refugee claimants are given verbal and written assurances by the Refugee Protection Division (RPD) and the Refugee Appeal Division (RAD) with respect to the confidentiality of their information and refugee application. These same assurances are adopted by the Immigration Division (ID) and Immigration Appeal Division (IAD) should their claim be suspended and transferred for an assessment of admissibility. These assurances should continue if the claimant or the Minister wishes to judicially review these decisions.

³ *Mother Doe v Havergal College*, 2020 ONSC 2227.

⁴ *Doe v Treasury Board (Canada Border Services Agency)*, 2018 FPSLRB 89

⁵ *Sherman Estate v Donovan* 2021 SCC 25.

⁶ *Child, Youth and Family Services Act*, 2017 S.O. 2017, c.14 Sched 1.

⁷ *Ibid*

⁸ *Ibid*

When an individual makes an asylum claim, they should not fear that their information may become public online in the worldwide internet in the future if they wish to exercise their right to a judicial review. This not only impacts the claimant, but also impacts those that are connected and referenced within the claim: family members, friends, and those that may serve as witness (orally or in writing).

Making pleadings public could further jeopardize a client's right to privacy, dignity, safety and security. It is easy to identify a person with only a single piece of information on the file that sets them apart. There have been cases where refugees have been killed and threatened on Canadian soil due to privacy breaches, and family members threatened abroad. Addressing the issue of breaches of privacy beyond individual cases should be at the center of maintaining confidence in Canada's asylum system.

Most countries anonymize decisions involving asylum claims before the courts in judicial review applications. Canada and U.S. practices are at odds with measures being taken in the world stage to keep asylum claims private. For instance, most countries use a combination of random initials to ensure confidentiality. In the UK, courts use the individual's actual initials and their country of origin in parentheses i.e., "AT (Iran)." Australia uses a mix of letters and numbers i.e. "S3995". Finally, most of Europe anonymizes cases by using initials. These practices are done automatically without any need for a motion, or any further procedure being required before federal courts in judicial review applications.

The UNHCR has internal practices designed to maintain the anonymity and confidentiality of the individual for the conduct of judicial review of a refugee status determination. In other countries, it is important to note that practices such as encryption of digital files are standard. For example, if a person is not successful or ultimately successful in their asylum claim and their information is public this could also create circumstances for a sur place claim or harm to family members in the country of origin.

In a more digital and open environment, effective measures are now urgently needed to ensure that information concerning a person's private life does not reach the hands of third parties online that might use such information for purposes incompatible with human rights law.

Right to be Forgotten in the Digital Era

Canada's law on data protection, primarily governed by *the Personal Information Protection and Electronic Documents Act* (PIPEDA), lacks an explicit "right to be forgotten," unlike European law which explicitly provides for this right through the General Data Protection Regulation (GDPR), which came into effect in 2016. *Google Spain v. AEPD*⁹ is the landmark case that established the right to be forgotten in Europe. This right allows individuals to request erasure of personal data when it is no longer necessary, consent is withdrawn, or it has been unlawfully processed.

In Canada, PIPEDA does not explicitly grant a right to be forgotten. While it includes principles such as consent, limiting use, disclosure, and retention, it does not mandate the erasure of personal data upon request in the same explicit manner as the GDPR.

Search engines like Google are considered data controllers under the GDPR and are obliged to remove links to personal data upon request if certain conditions are met. The *Google Spain v AEPD* case set a significant precedent, establishing that search engines must comply with requests to remove personal data links from search results. In Canada, the Federal Court of Appeal has ruled that Google's search engine does not fall under the journalistic or artistic exemptions, meaning it can be subject to privacy complaints. However, the right to be forgotten has not been explicitly mandated.

⁹ *Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González* (2014 Judgment of the Court (Grand Chamber) #Case C-131/12

The right to be forgotten is an essential principle that should be considered, for the following reasons:

1. **Balance of Interests:** The right to be forgotten seeks to balance the public's right to access information with an individual's right to privacy. It ensures that while important and relevant public information remains accessible, personal data that no longer serves a valid purpose can be removed.
2. **Legal Compliance and Enforcement:** It ensures that data processors and controllers adhere to legal standards regarding data protection and privacy, fostering greater accountability and responsibility among those who handle personal data.
3. **Privacy Protection:** It empowers individuals to control their personal data and maintain their privacy by ensuring that outdated, irrelevant, or inaccurate information about them can be removed from public access. This is particularly crucial in an age where sensitive information can be easily disseminated and accessed globally via the internet and can fall into the wrong hands.
4. **Data Control:** It reinforces the idea that personal data belongs to individuals, not to the entities that collect it. This principle supports the broader concept of data subject rights, ensuring that individuals have a say in how their personal information is used and disseminated.
5. **Reputation Management:** The right to be forgotten allows individuals to manage their online reputation. Past actions or information that no longer reflect their current status or character can be removed, thereby preventing potential personal or professional harm.
6. **Psychological Well-being:** Knowing that they have the power to remove certain personal information can provide individuals with peace of mind and reduce anxiety related to unwanted exposure or potential misuse of their data.

The right to be forgotten is a crucial element of contemporary data protection frameworks, ensuring the respect of individuals' rights and freedoms in the digital era. This right is particularly significant for immigration and refugee court files, where personal data is part of the official record, and its exposure in the digital age could be harmful. It should be at the forefront of any system designed around Court disclosure of information.

Espionage of foreign citizens and foreign interference in Canadian soil

The CBA Section is concerned about the dissemination of personal, financial and medical information online by the courts in pleadings and tribunal records.

There have been countless cases¹⁰ of espionage and threats made to foreign nationals on Canadian soil by members of foreign services.

We respectfully submit that protection of such sensitive information is of paramount importance in keeping foreign nationals that become permanent residents and citizens in safety and security.

It is reported for example, the Chinese government will continue to judge Chinese citizens in Canada and elsewhere by their "social credit"-including Chinese Canadians. "Their personal data is not necessarily always protected when they are located overseas. Continued attention is required in developed economies to identify strategic and emerging technologies that can be used to boost social control and state security in China and develop related controls. Not all Chinese companies investing in Canadian or other foreign technology companies are arms of the state, but they are in competition to contribute to the objectives the CCP prioritizes"¹¹.

¹⁰ Des citoyens canadiens accusent le régime algérien d'espionnage et d'intimidation (msn.com) : [online](#)

¹¹ Iran: surveillance de la diaspora (Bericht (osar.ch)) : [online](#)

China is not alone in this. Many countries participate in espionage in Canada against Canadian citizens and Canadian interests. Both the Algerian and Indian governments represent recent examples of government actors using publicly available information to surveil their citizens and monitor their activities^{12s}.

CBA Immigration Law Section recommendations

- 1) Consult and follow the lead of Superior Courts to ensure the right to privacy is consistent before all Courts in Canada in this digital age for the better administration of Justice. This way our judicial system will better protect privacy and dignity in cases dealing with minors, adoptions, family law, mental disability, medical records, rape survivors, informants, financial records, third party information online. Put an end to the two tier system we currently have in place.
- 2) Follow UNHCR Guidelines and keep refugee files anonymized before the Federal Courts, and proceedings in chambers. Only issue anonymized decisions. Allow academic and media access in Canada and with justification and with client's authorization.
- 3) Keep pleadings and court records offline since they contain sensitive personal and financial information that can easily be targeted by criminals looking to perform identity theft and to commit fraud.
- 4) Keep pleadings offline so counsel can freely refer to private court records to better argue their case and avoid having judges flip through hundreds of pages of court records to ensure access to justice and simplicity.
- 5) Put measures in place to protect the right to privacy to avoid data mining of personal information that can serve as an open buffet for fraudsters online and facilitate foreign interference.
- 6) Be mindful in drafting the rules of the right to be forgotten as part of the Court's statutory mandate to ensure the proper administration of justice.
- 7) Amend the Federal Court's Immigration Rules to double if not triple the timelines for each procedural step in litigations that are subject to case management.

[1] See Article 12 of the Universal Declaration of Human Rights of 10 December 1948 and Article 17 (1) of the International Covenant on Civil and Political Rights of 16 December 1966 (ICCPR). See also Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 4 November 1950; Article 11 of the American Convention on Human Rights (ACHR) of 22 November 1969.

The Intellectual Property Law Section adds the following (confidential documents):

The CBA Section agrees that clarity for the requirements and procedures applicable to the filing of confidential documents is warranted. For example, the Rules should provide the ability for parties to file materials under seal not only where there is an order or direction permitting it, but also in the situation where there is a pending Rule 151 motion or an intention to seek such a motion. Sometimes confidential materials need to be filed quickly, and a party cannot always obtain the Rule 151 order in advance.

¹² Big data and the social credit system: The security consequence (Canada): [online](#) and Parliamentary Committee Notes: Foreign Interference: Threats to Communities (Canada): [online](#).

The ability to obtain a protective order (the purpose of which is to protect confidential information during discovery) is not directly specified in the Rules. Currently, as summarized in *CN Railway Co. v. BNSF Railway Co.* 2020 FCA 45, a protective order is derived from Rule 3 and Rule 4, as well as Rule 385(1) for specially managed proceedings. The CBA IPCPC accordingly submits that the public will benefit from amending the Rules to specify the ability to obtain a protective order and the circumstances applicable to obtaining same.

b) to explicitly allow a moving party to seek leave, by way of letter, to be relieved from the requirement of bringing a formal motion in specified circumstances?

Permit informal requests for interlocutory relief

While the ability to obtain relief from the requirement that a formal motion record be filed for all interlocutory motions (formal requirement) is clearly provided in the FC's Practice Guidelines, the public will benefit from amending the Rules to specify this practice (this may be particularly helpful to self-represented litigants who may be unfamiliar with the concept of Practice Directions or Guidelines). The CBA Section acknowledges that this practice has become ubiquitous before both Federal Courts. Accordingly, it should be specifically included within the Rules. We recommend that adopted language provide for the Court's discretion to order or direct relief from the formal requirement in procedural matters as set out in the Practice Guidelines. The CBA Section submits that the language contained in the Practice Guidelines that outline the process whereby a formal motion may nonetheless be required would be informative to include (e.g., if any party opposes the interlocutory motion).

c) to clarify the procedure for seeking an adjournment?

The CBA Section submits that clarity regarding the procedure to obtain the adjournment of a hearing will benefit the public. For example, Rule 36 may be expanded to provide for how such an adjournment may be requested. The Practice Guidelines state this request is to be made by way of a formal motion. The Practice Guidelines further stipulate that where the circumstances necessitating the adjournment request arise within five days of the scheduled hearing, a letter may be sent to the Judicial Administrator (with copy to the hearing judge). The inclusion of these requirements in the Rules would be helpful and is supported by the CBA Section.

d) to reflect paragraph 74 of the FC's Amended Consolidated Practice Direction? (disposition and/ or quantum of costs)

The CBA Section does not believe this issue to be critical or requiring a Rules' amendment. Our experience is that counsel tend to be prepared to address the issue of costs at the end of a hearing, even if it is to request a period of time to make formal submissions where parties cannot agree to disposition or quantum of costs. It is our further experience that the manner in which costs are to be addressed is typically addressed in the trial management conference prior to commencement of the hearing, which works well.

e) to require that condensed books, compendia and day books be filed on appeal, or make explicit the FCA's authority to require that they be filed?

The CBA Section agrees with a default requirement to file compendia and day books in appeals, or at least making explicit the FCA's authority to require that they be filed. We suggest that the contents of these filings be clarified, and by when they are to be served/filed. For example, compendia could be delivered a few days before the hearing, and contain only materials from the appeal book that are cited in the memorandum. Day books can be delivered (handed up) on the hearing day and contain the appeal book entries and authorities that counsel intends to address in oral argument.

With respect to condensed books, it is assumed that those are the same as day books. See comments above regarding day books.

f) to address the use of compendia in the FC?

With respect to the use of compendia in the FC, see comments above regarding the contents of compendia. With respect to timing of delivery of compendia, a few days before the hearing is reasonable.

g) to provide that an outline of oral argument may be filed?

With respect to oral argument outlines, they should be encouraged, but clear limits on their scope/length/contents should be established. Outlines of oral argument must not become an opportunity for a party to gain extra pages (or words) of written argument. Putting a strict word count limit, etc. would ensure these outlines serve their intended purpose of being outlines.

Notwithstanding the above, the Court should retain overall discretion to waive any requirement for one or more of the above materials in some cases, and permit parties to request to be relieved from such requirements as applicable. More particularly, requiring additional materials adds to the cost of litigation and not all cases may warrant such materials given the amounts at stake or other factors. The Court should also consider implementing guidance regarding how far counsel may (or may not) veer from their client's memorandum of fact and law. For example, it would be preferable to avoid debates at the hearing over a "surprise" change in position being included in a written outline of oral argument.

5. With respect to Issue 4 of the Invitation to participate, should the Rules be amended to reflect jurisprudential developments (see specific examples in the Invitation to participate)?

The CBA Immigration Law Section makes the following suggestions:

Prohibiting non-lawyers from representing family members in the interest of justice.

The CBA Section has consistently pleaded against allowing non-lawyers and consultants to represent clients before the Federal Courts. The rights at stake are very high involving fundamental rights, livelihood, and life and death. The issue of ghost representatives and consultants impersonating clients is serious, not to mention a criminal offense.

The proposal to allow non-lawyers, when they are family members, to represent clients before the Federal Courts must be consistent with the measures taken to protect the public.

In most jurisdictions across Canada, even articling students cannot represent clients before the Federal Courts without a lawyer's supervision to protect the public. Accordingly non-lawyers, with or without legal training, should be prohibited from representing clients, including their family members.

To protect the public, many Law Societies across Canada discourage lawyers from representing family members under their respective provincial Code of Ethics given legitimate concerns over ethics and conflict of interests. This rationale should apply equally to all non-lawyers wishing to represent their family members.

IRCC has a strict policy prohibiting family members from acting as translators for clients because family members can be in a conflict of interest with clients. This rationale should apply to family members wishing to represent their own family.

The immigration bar has heard of cases of so-called "family members" representing hundreds of clients before the IRB.

Furthermore, it will be impossible for Courts to verify family ties. Allowing "family members" to represent clients will lead to arbitrary decisions and open the door to further abuse instead of protecting vulnerable clients and ensuring they get a fair hearing. Non-lawyers should not be allowed to do indirectly what they cannot do directly.

Recommendations from the Immigration Law Section:

- Continue to prohibit non-lawyers from representing any clients, including family members, for the better administration of Justice.
- Launch a public campaign on access to legal aid lawyers across Canada.
- Launch a public campaign to inform the public that there are legal consequences for non-lawyers to represent clients, or if they are ghosting as clients for a fee.
- Work with the law societies to identify patterns of ghost representatives before the Courts to ensure the protection of the public in the interest of Justice.
- Ensure lawyers are always appointed to litigants who do not understand the nature of the proceedings in the interest of Justice by following the teachings of the Court of Appeal in *A.N. c. Centre intégré universitaire de santé et de services sociaux du Nord-de-l'Île-de-Montréal*, 2022 QCCA 1167 (CanLII), <https://canlii.ca/t/jrqrn>

The CBA Intellectual Property Law makes the following submissions on jurisprudential developments:

The CBA Section submits that the Rules should not be amended to permit the summary dismissal of an appeal (*Dugré v. Canada (Attorney General)* 2021 CAF 8)? The Dugré decision related to a group of appeals in which leave to appeal was dismissed in each case. As such, these cases were not dismissals of proper appeals. While the facts of Dugré relate to an overly-vexed litigant, there are already effective procedures in the Rules to provide for this. To extinguish appeals on the merits summarily is considered by the CBA Section to be within the framework of the present Rules.

The CBA Section submits that the Rules should not be amended to permit representation by a non-lawyer if the interests of justice so require (*Erdmann v. Canada*, 2001 FCA 138)? This case ended with an acknowledgement that, at the hearing of the application, the non-lawyer be permitted to speak on the party's behalf if the party was not then represented by counsel. While permitting non-lawyers to represent individuals may give the impression of access to justice, there is a risk that parties, particularly in some corners of the bar, may not fully appreciate the difference between the limitations of an agent and that of a lawyer. From the perspective of the Intellectual Property Bar, this distinction will only lead to a decrease in efficiency and an increase in complexity.

As to whether other amendments to the Rules should be contemplated with respect to representation, without a specific measure in mind, it is difficult to comment from the perspective of the IP Bar. As to whether Rule 167 should be amended to provide that the burden of satisfying the Court that it ought to order another sanction rests on the party facing the dismissal of its action (*Sweet Productions Inc. v. Licensing IP International S.À.R.L.*, 2021 FC 216)? The CBA Section submits they should. The case, affirmed by the Supreme Court of Canada (SCC), stands for the principle that the presumption is dismissal where undue delay is found. Absent a Court being convinced, on a balance of probabilities, that imposing another sanction is more appropriate, the proceeding should be dismissed. The burden of satisfying the Court that another sanction is more appropriate is, and should be, on the party facing the dismissal. This is the ruling of this case, affirmed by the SCC. The CBA Section submits this Rule should be clearly expressed so that it is clear what is required by parties seeking to keep their cases alive.

Whether Rule 300 should be amended to explicitly provide that trademark infringement proceedings may be brought by way of application (*BBM Canada v. Research In Motion Limited*, 2011 FCA 151), the CBA Section submits they should. The Rules should be permissive to offer litigants the option of which procedural path to use based on the parameters of their case.

As to whether Rule 466 should be amended to explicitly provide that failure to comply with a direction can constitute contempt (*Njoroge v. Canada (Attorney General)*, 2023 FCA 98), the CBA Section submits they should not. The failure to comply with a direction appears to constitute conduct amounting to contempt under three categories listed in Rule 466: Rule 466(b) ("disobeys a process... of the Court"); Rule 466(c) ("interfere[s] with the orderly administration of justice"); or Rule 466(d) ("is an officer of the Court and fails to perform his or her duty"). Indeed, a finding of contempt may result from a broad range of actions with the effect of obstructing justice and does not arise only upon breach of an order of a tribunal or court. While directions are not mere suggestions as to what might happen in the conduct of a case, they do carry the weight of judicial authority, and should attract sanctions for non-compliance. However, there are many remedies short of contempt that are available where a party fails to comply with a direction. Those arise from the Court's plenary jurisdiction to manage its own process and proceedings. Contempt in the context of failure to follow a direction should be a rare occurrence and should arise by virtue of an escalation of a default and not as a result of a first instance occurrence.

6. With respect to Issue 5 of the Invitation to participate, should the Rules be amended to adjust the monetary limits upwards for simplified actions?

The CBA Intellectual Property Law Section agrees that the procedure for simplified actions may apply to cases with monetary relief greater than \$100,000. There is consensus that there is little difference between cases worth \$100,000 and cases worth marginally more.

7. With respect to Issue 6 of the Invitation to participate, should the Rules be modified to expand the role of associate judges?

The CBA Intellectual Property Law Section has several concerns with expanding the role of associate judges. We stress that we view associate judges as extremely capable and necessary members of the Court and our views in this discussion are not meant to undermine that position in any way.

1. Associate judges play a specific and extremely important role in the case-management of cases. They are experts at case-management and at procedural issues. Expanding their role to presiding over motions for injunctive relief, contempt, and summary judgment raises several legal considerations that are separate and apart from the expertise of associate judges in this regard. In addition to the fact these issues are illustrative of the issues dealt with by judges, these issues also include the consideration of matters of incarceration, constitutional issues, the merits of an IP case, and the nature of evidence showing irreparable harm, among others.
2. These issues often determine the outcome of a matter at an early stage and may be dispositive, or at least, may narrow the issues to be tried, which adds to their importance and impact. Accordingly, where the disposition of such motions may carry such weighty consequences, their determination should remain with the judges.
3. We understand there is currently a backlog in the scheduling and hearing of procedural matters. Increasing the remit of associate judges will only serve to increase this backlog. If they are tasked with hearing substantive issues in addition to procedural issues and case management, there will be a corresponding increased delay in scheduling procedural matters.
4. Following from above, allowing associate judges to hear motions for injunctions, summary judgment, and contempt may not actually result in any efficiencies, as these decisions are often appealed. It is likely that parties would take advantage of the extra appellate layer found in Rule

51 that allows decisions of associate judges to be appealed first to a judge and then to the FCA. Accordingly, there may not be material judicial efficiencies achieved by increasing the remit of associate judges as suggested above. The CBA Section therefore submits these motions should be decided by a judge in the first instance.

However, we do agree that associate judges should be able to vary the order of a judge in the circumstances described.

We note that the ability of associate judges to grant judgments on consent appears to already exist in s. 50(5) of the *Federal Courts Act*.

8. With respect to Issue 7 of the Invitation to participate, should the Rules be amended to provide limited discretionary power to the registry to either accept or refuse non-compliant documents?

The CBA Intellectual Property Law Section submits that the Rules should not be amended to provide limited discretionary power to the registry to either accept or refuse non-compliant documents. The Rules have a mechanism that provides for the acceptance of documents. Rule 72 provides that:

Irregular documents

72 (1) *Where a document is submitted for filing, the Administrator shall*

(a) accept the document for filing; or

(b) where the Administrator is of the opinion that the document is not in the form required by these Rules or that other conditions precedent to its filing have not been fulfilled, refer the document without delay to a judge or prothonotary.

(2) On receipt of a document referred under paragraph (1)(b), the judge or prothonotary may direct the Administrator to

(a) accept or reject the document; or

(b) accept the document subject to conditions as to the making of any corrections or the fulfilling of any conditions precedent.

Under the current Rule, there is no discretion on the Administrator to reject a document for filing. That should not change. Rather, the Rules provide that documents should be transmitted without delay to a judge or prothonotary, which in most cases is fast, efficient, and judicious. Moreover, it prevents unfortunate confrontations “over the counter” between court administration staff and a process server or agent. This rule is oft neglected in practice. But in those cases where members of the Bar have furnished a letter citing Rule 72, the document has been accepted for consideration. The Bar is not in favour of departing from this mechanism, which takes the issue out of the discretionary realm of the counter official, and puts it squarely within the Court.

9. With respect to Issue 8 of the Invitation to participate, should the Rules governing class actions be amended to reflect certain procedural changes that have been made in the provinces, notably Ontario?

The OBA Class Action Section suggests the following changes:

Costs

Federal Courts Rules Rule 334.39 provides that, absent exceptional circumstances, no costs may be awarded against any party to a motion for certification of a proceeding as a class proceeding, to a class proceeding or to an appeal arising from a class proceeding. The FC’s jurisprudence is unclear as to exactly

which steps qualify for the purposes of the no-costs protection of Rule 334.39. The Rules Committee may wish to clarify. On the wider issue of changes to the costs regime for class proceedings, the Ontario class actions bar is divided between the appropriateness of a complete “no costs” regime or a “loser pays” costs regime.

Preliminary Motions

Ontario recently introduced a requirement that courts hear dispositive or issue-narrowing motions before or at certification (*Class Proceedings Act (CPA)* s. 4.1). A similar FC Rule could circumvent the sequencing issues in other provinces (*BC v The Jean Coutu Group (PJC) Inc*, 2021 BCCA 219) and weed out meritless claims without the delay and expense of certification.

Proponents argue that s. 4.1 requires the court to hear and decide dispositive or issue-narrowing motions prior to certification, unless the court exercises its discretion to order that the motion be heard at the same time as certification, which eliminates concerns about increased upfront complexity, cost, and delay. Opponents argue that it can be more efficient to hear certain issue-narrowing motions after certification, and that the court should have discretion to do so.

Carriage

Carriage motions determine who represents the class and which legal theories are pursued on its behalf. However, they can also cause delay, increased cost and uncertainty. Based on the recommendation of the Law Commission of Ontario, Ontario recently introduced s. 13.1 of the *CPA* that contains a deadline to file competing actions and bring carriage motions, remove appeal rights for carriage motions, place the cost of carriage motions on class counsel, and introduce defined criteria for courts to use when determining carriage. This could form a valuable addition to the FC Rules.

Mandatory Dismissal for Delay

To address dormant class proceedings, Ontario recently added a mandatory dismissal for delay provision (*CPA* s. 29.1). The case law demonstrates two issues the Rules Committee may wish to address. First, s. 29.1 leaves room for uncertainty about what constitutes a timetable for the purposes of s. 29.1(1)(b-c). Second, while there is general support for s. 29.1 amongst the Ontario class actions bar, there is division on whether the Court should have discretion to deviate from it in certain circumstances. In Ontario and some other jurisdictions, for example, technical issues may arise to serve or file a certification motion record preventing the meeting of a strict deadline. For those members of the bar who support discretion for this rule, these technical issues could be remedied if the Court had discretion to deviate from the requirements of s. 29.1. Other members of the bar are of the view that this discretion should be applied via s. 29.1(1)(c) before the deadline, not after.

Predominance and Superiority

There is no consensus in the class actions bar about the advisability of the predominance and superiority criteria recently introduced into the *CPA*'s certification test. While the defence side is generally supportive of these criteria because they are perceived as raising the bar for certification to enhance the certification judge's gatekeeping function, the plaintiff side sees them, *inter alia*, as barriers to judicial economy and access to justice. There is agreement, however, that these legislative changes have reduced the number of class proceedings being brought in Ontario, shifting them elsewhere.

10. The Sub-Committee welcomes any comments and suggestions regarding the miscellaneous amendments identified in Issue 9 of the Invitation to participate.

The Sub-Committee proposes that consideration be given to making other amendments to the Rules. Examples include:

Timelines:

- Amend Rule 7(2) to increase the period of a consent extension beyond one half of the initial period;

The CBA Intellectual Property Law Section submits that this appears reasonable.

- Amend Rule 51(2) to extend the deadline to appeal the order of an associate judge in a simplified action to 30 days from 10;

The CBA Section submits that this appears reasonable.

- Set a deadline for the service of expert reports under Rule 52.2; Consider whether it would be preferable to set a fixed deadline (for example, 10 days) after service under Rule 203(2);

Rule 203 applies to the service of proof of service of a statement of claim. In many actions, expert reports cannot be prepared until after the completion of at least the first round of discovery. As a result, a universal default date of delivery this early would be unworkable in many IP proceedings.

- Remove the 30-day notice in the notice of pre-trial conference under Rule 261;

The CBA Section is not providing comment on this proposed change.

- Consider whether the notice of appearance under Rule 305 should include grounds of opposition, and whether the timeline for filing the notice of appearance should be extended;

This does not appear to add much incremental value in many proceedings (*e.g.*, appeals from Trademarks Opposition Board decisions), while increasing the cost of filing what is supposed to be a “stopgap” notice/pleading. However, where a proceeding is being brought by way of application rather than action (which is suggested above re: Issue 4), a substantive notice of appearance including grounds of opposition would be helpful to the parties and Court in establishing the basis for opposing the application.

- Have the 30-day timeline for the service of the Applicant’s affidavit under Rule 306 run from the date of transmission of Certified Tribunal Record (CTR) or, if there is no CTR, from the date of service of the notice of appearance or the expiry of the time to serve the notice of appearance;

This appears sensible, insofar as it permits the evidence to better account for the contents of the CTR and better focus the application where such request is made in the notice of application. However, the Rules currently do not restrict requesting a CTR to making such a request in the notice of application. If this change is made, the ability to later request the CTR should be preserved, as matters may arise such that the applicant may only have a reasonable basis for requesting the CTR later.

- Extend the 20-day limit for cross-examinations under Rule 308;

The CBA Section queries how this will affect judicial review proceedings where a party is looking to expedite matters. Furthermore, this is a time period that many judicial review proceedings are simply waiting to pass. It is a relatively simple matter to extend deadlines on consent, which is already provided

by the Rules. It is much more difficult and less likely to have consent when one party seeks to shorten deadlines.

- Amend Rule 314(2)(c) to require a party filing a requisition to indicate whether all parties agree with the assessment of the maximum number of days or hours required for the hearing, and if not, how many days or hours each party believes are required; and

The CBA Section submits that this appears reasonable.

- Amend Rule 314(2)(d) to require that parties provide their availabilities for more than 90 days in their requisition for a hearing.

The CBA Section submits this appears reasonable, however notes that if the presumption is that once the dates are provided to the Court they are held by the parties until the Court confirms the hearing date, it is important that the Court provide that confirmation promptly so the remaining dates may be released by the parties.

Procedural issues:

- Consider whether the Rules should address the swearing of witnesses appearing by video from foreign jurisdictions, and whether Rule 92 should be amended to refer to “sworn or affirmed” rather than only to “sworn”;

The CBA Section submits it is important that “affirmed” should be added. If amended, Rule 80 should similarly be updated.

It would be helpful to have clarity as to how to approach swearing or affirming witnesses abroad when examined by video, both inside and outside of Court.

- Under Rule 95(2), consider requiring answers to non-privileged and proportionate questions under reserve of objection, unless otherwise ordered;

While the CBA Section submits this appears reasonable in theory, the difficulty is in determining outside of the Court the scope of “proportionate”. In addition, what is to occur when the witness being examined does not know the answer and an undertaking is requested? Imposing such a requirement would not gain efficiencies and could be ripe for abuse.

- Consider limiting written representations on a motion to a fixed page or word limit under Rule 364, and making related changes to Rules 369(3) and 369.2(3) for motions in writing;

This would be helpful, so long as it is clear that the limit would apply, absent order of the Court, given the more varied range of matters that can potentially be addressed by written representations which might require submissions exceeding, e.g., 30 pages.

- Consider creating a new Rule under Part 2 – Administration of the Court to govern communications to the Court via the Registry on matters of substance without the consent of the other party or leave of the Court. (See Rule 1.09 of Ontario’s Rules of Civil Procedure).

The CBA Section are not aware of this having been an issue such that a rule is required.

Other areas of possible reform

Other areas of possible reform identified by the Sub-Committee include the following:

- Currently, under Rule 51(1), decisions of associate judges may be appealed by a motion to a judge of the FC. Should the Rules be amended to provide that decisions of associate judges may be appealed only with leave, or directly to the FCA?

There have not been an overwhelming number of such motions as of late, such that further restricting the practice seems warranted or necessary.

- Currently, the Rules apply to proceedings before both the FC and the FCA. Should there be two sets of rules, one for each Court?

We are not aware as to what “issue” this would resolve to be able to comment upon it.

- Should a Rule be added to address the permitted scope of practice directions?

The CBA Section submits that this may be helpful, insofar as it may be argued that some practice directions have imposed requirements that would typically be done by way of amendment to the rules.

However, any restriction on the issuance of practice directions should include the ability to make directions for limited time periods, as was done to quickly address matters that arose during the pandemic.

- Should dedicated Rules be developed for particular practice areas?

The CBA Section submits that this appears to be better addressed through practice directions.

- Should the Rules be streamlined or simplified in any particular way?

Rule 303(1) arguably does not include an obligation to name the decision maker when it is not a formal tribunal notwithstanding that, as a matter of practice, the decision maker has been named in most judicial review proceedings that are not in respect of formal tribunals (*e.g.* Minister of Health). It would be helpful to make clear whether there is an obligation to do so or that there is no such obligation.

Rule 334.14 permits the application of formation of a class proceeding where there is a class of defendants and a representative defendant. While Rule 334.14(3) applies the rules, with necessary modification to these proceedings, there is no notice requirement or participation rights afforded to any of the non-representative defendants prior to certification. It is worth considering, given that the plaintiff is choosing the representative defendant without their consent, that there be some sort of formal notice/challenge mechanism for defendants not chosen to be representative by the plaintiff.

With respect to summary trial, given that the rules permit dismissal on the bases set out in Rule 216(5), consider whether to build in some sort of preliminary determination in this regard to potentially save the expenditure of significant resources to generate the summary trial record, only to be told that the motion will not be determined on the merits after responding to the record and arguing the merits.

There is no rule to address timing for service of a counterclaim when new Defendants by Counterclaim are added. The commentary suggests 30 days. However, a rule would be preferable.

Adding a rule to allow waiver of an oral hearing in an application would be welcomed. This has arisen most often in applications to correct the inventors of a patent, where the application is unopposed. However, it may also be relevant to other situations.

11. The Sub-Committee welcomes any comments and suggestions regarding the items identified under the heading "Other areas of possible reform" in the Invitation to participate.

The CBA Immigration Law Section makes the following arguments:

Needed procedural accommodations for managed litigations

The Immigration Bar is mindful that the timelines for the Federal Court's Immigration Rules are set based on the expectation that applicants will be relying on the evidence before the officer only, i.e., will not need to gather and produce additional evidence. For this reason, hearings of such matters are scheduled for a maximum of 90 minutes. Managed Litigations, however, operate differently. They often raise issues that require proof of the context in which decisions are made. They tend to have significant evidentiary records which in turn require the scheduling of hearings that span several days if not weeks. Given the legal and evidentiary complexities of managed litigations, the lifespan of such applications, and the number of steps and issues that come up for discussion and which may require an extension of time to address, they are also many times over than those of standard applications for judicial review.

With such enhanced evidentiary records produced to address the legal and procedural complexities of managed litigations, the Immigration bar believes they should operate on different timelines than standard applications for judicial review. This is because it is a burden on the Court and the parties to ask for extensions from the standard timelines at each stage and for each issue that arises during the life of managed litigations. Especially given the fact that many foreign nationals subject to immigration litigation have little financial means to pursue their challenges against the Minister while the Minister has endless resources at its disposal, the increased burden disproportionately impacts the parties. The work and costs associated with each instance of a needed extension, whether by informal or formal motion, create disproportional hardship for applicants. It may cause many to abandon their legal efforts during the case management process before their underlying concerns reach the Court through a hearing. Aside from the financial hardship on applicants, they may also experience practical hardships arising from the disproportionate impact of the unnecessary work caused by the repeated need to seek extensions of time. While the Respondent has endless resources and can assign multiple lawyers and support staff to address the filing needs of applications, applicants and their lawyers may not have the staffing resources to tend to the volume of work required to address each required extension. Lastly, the need to seek extensions on a case-by-case basis also adds significant delay to the case management process. Each such motion may take weeks or months to adjudicate, unnecessarily prolonging the case management process.

This submission was prepared by the CBA Intellectual Property Law and Immigration Law Sections along with the OBA Class Actions Section, with assistance from the Advocacy Department at the CBA office. The submission has been reviewed by the Policy Committee and approved as a public statement by all the contributing Sections.