



TO : Judicial Administrator

FROM : Biringer J.A.

DATE : October 13, 2026

RE : A-235-26 *Canadian Immigration Lawyers Association v. The Minister of Citizenship and Immigration, The Minister of Public Safety and Emergency Preparedness, and The Minister of Employment and Social Development Canada*

DIRECTION

By notice of appeal dated May 25, 2026, the appellant seeks to appeal a decision of the Federal Court: *Canadian Immigration Lawyers Association v. Canada (Citizenship and Immigration)*, 2026 FC 617. The Federal Court struck the application for leave and for judicial review under the *Immigration and Refugee Protection Act, S.C. 2001, c. 27, (IRPA)*, without leave to amend. The Federal Court determined that the applicant had failed to identify a reviewable conduct or matter under section 18.1 of the *Federal Courts Act*, and thus that it did not have jurisdiction to hear the matter. The Federal Court also concluded that the applicant did not have public interest standing to bring the application for leave and for judicial review.

By direction dated June 23, 2026, this Court called for a review under Rule 74 of the *Federal Courts Rules*, S.O.R./98-106 and the Court's plenary powers. The Court asked for submissions on whether the notice of appeal should be removed from the file and the file be closed because there was no certified question. Paragraph 74(d) of the *IRPA* provides that an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge of the Federal Court certifies a serious question of general importance.

This Court permits appeals absent a certified question in very limited circumstances, including where a case raises "very fundamental matters", "truly exceptional matters that strike right at the rule of law": *Majoub v. Canada (Citizenship and Immigration)*, 2017 FCA 144 at para. 19. An appeal may also be available if the Federal Court fails to exercise or exceeds its jurisdiction: *Subhaschandran v. Canada (Solicitor General)*, 2005 FCA 27 at para. 16; *Canada (MCI) v. Tennant*, 2018 FCA 132 at para. 14. Jurisdictional error does not include a mere error of law.

The appellant submits that this Court should hear the appeal because the Federal Court erred in concluding that it did not have jurisdiction and, therefore, failed to exercise its jurisdiction. The appellant also submits that the Federal Court's conclusion on its public interest standing was *obiter* and disagrees with it.

In this matter, the issue of whether this Court should hear the appeal is inextricably intertwined with the merits of the Federal Court's decision. Accordingly, the Court declines to determine at this time whether it should hear the appeal and has not concluded that it should remove the notice of appeal from the Court's file as being "doomed to fail".

The notice of appeal shall remain filed and the appeal perfected for a hearing. Both the matter of whether this Court should hear the appeal and, if to be heard, the merits of such an appeal will be for the panel assigned to this matter to consider.

The parties shall file an agreement as to the contents of the appeal book, pursuant to Rule 343 within 30 days from the date of this direction (or bring a motion in the event of a failure to reach an agreement) and the timing for next steps in the proceeding shall thereafter follow the *Federal Courts Rules*.

"MB"