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August 7th, 2026

Federal Court of Appeal
90 Sparks Street, 5th Floor
Ottawa, Ontario K1A 0H9

Attention: Registry of the Federal Court of Appeal

Dear Sir/Madam:

Re: Canadian Immigration Lawyers Association v. MCI et al, A-235-26

Overview

This Notice of Appeal should be removed from the Court file because it is barred by the preclusive clauses in the *Immigration and Refugee Protection Act (IRPA)*.¹ The Appellant, the Canadian Immigration Lawyers Association (CILA), seeks to appeal the decision from the Court below despite the absence of a serious question of general importance having been certified. However, the alleged errors identified amount to disagreements with the Application Judge's application of the law to the facts; CILA has not identified a fundamental flaw going to the very root of the Court's authority to decide the case, nor has it identified a defect that raises serious concerns about the Court's compliance with the rule of law. Therefore, the Notice of Appeal was not filed in accordance with either the *Federal Courts Rules* or the *IRPA* and should be removed from the Court file.

¹ *Immigration and Refugee Protection Act*, [SC 2001, c 27](#), ss [72\(2\)\(e\)](#), [74\(d\)](#) [*IRPA*].

1. *The Decision Below*

The decision below, *Canadian Immigration Lawyers Association v. Canada (MCI) et al.*, 2026 FC 617, concerns an application for leave and judicial review (ALJR) brought by CILA, an organization of immigration lawyers, seeking a declaration that there is a right to counsel in immigration and refugee applications and examinations/interviews either under the *Charter* or the common law.² CILA argued that s. 167(1) of the *IRPA* was underinclusive and challenged the Respondents' practices that were allegedly derivative of that provision.³ The ALJR did not pertain to any refusal or adverse administrative decision relating to any claimant or person. There was also no applicant directly affected by any matter raised in the litigation.

After the application was perfected, the Respondents brought a motion to strike the litigation on the following grounds:

1. The ALJR did not raise a “matter” amenable to judicial review under s. 18.1 of the *Federal Courts Act* and is therefore bereft of any possibility of success.
2. The ALJR contravened Rule 302 of the *Federal Courts Rules* (the requirement that an ALJR be limited to a single order in respect of which relief is sought) as it challenged a variety of actions by several federal departments with different underlying processes.⁴
3. CILA did not have standing to bring the litigation under s. 18.1 of the *Federal Courts Act*,⁵ because CILA was not a person or entity directly affected by the matter in respect of which relief was sought and did not meet the test for public interest standing.

² *Canadian Immigration Lawyers Association v Canada (MCI) et al*, [2026 FC 617](#) at para [4](#) [FC Decision].

³ [FC decision](#), *supra* note 2, at paras [36-37](#).

⁴ *Federal Courts Rules*, [SOR/98-106](#), s [302](#) [*Federal Courts Rules*].

⁵ *Federal Courts Act*, [RSC 1985, c F-7](#), s [18.1](#) [*Federal Courts Act*].

The Federal Court, per Gleeson J., granted the motion, striking the ALJR on all three grounds put forth by the Respondents. Specifically, the Federal Court found:

1. Although a “decision” is not a pre-requisite to bringing an ALJR, a freestanding constitutional challenge to a provision enacted by Parliament (in this case, s. 167(1) of the *IRPA*) is not a reviewable “matter” under s. 18.1 of the *Federal Courts Act*.⁶ Similarly, the Respondents’ “practices” concerning the right to counsel do not constitute closely connected allegedly unlawful government conduct such that there is a reviewable matter under s. 18.1 of the *Federal Courts Act*.⁷
2. For the same reasons – the absence of a closely connected course of allegedly unlawful government action – the ALJR was not compliant with Rule 302 of the *Federal Courts Rules*, and there was no basis upon which the Court might exercise its discretion under Rule 302.⁸
3. CILA failed to meet the test for public interest standing because, *inter alia*, there was no serious justiciable issue for two independent reasons: (1) there was no reviewable matter under s. 18.1 of the *Federal Courts Act*, and (2) on the merits, the ALJR raised no *serious* issue because success on the ALJR would require the Court to overturn decades of jurisprudence from all levels of Court holding that there is no absolute right to counsel in *IRPA* matters.⁹

In his concluding paragraph, Gleeson J. clarified that his finding on public interest standing was independently dispositive of the motion, stating “had I concluded above the ALJR

⁶ [FC decision](#), *supra* note 2, at paras [46-61](#).

⁷ *Ibid*, at paras [42-44](#).

⁸ *Ibid*, at para [45](#).

⁹ *Ibid*, at paras [70-77](#).

was not doomed to fail, I would nonetheless find that CILA cannot be granted public interest standing, and the Ministers' motion would be allowed on this ground."¹⁰

The Federal Court did not certify a question of general importance for appeal.

2. This Court's Jurisdiction to remove non-compliant Notices of Appeal

Paragraph 52(a) of the *Federal Courts Act* permits this Court to "quash proceedings in cases brought before it in which it has no jurisdiction or whenever those proceedings are not taken in good faith."¹¹

In a complementary fashion, Rule 74 of the *Federal Courts Rules* provides for the removal of documents, such as CILA's Notice of Appeal, that have been filed but do not comply with the legislative preconditions for a right of appeal.¹² With respect to immigration appeals filed in the absence of a certified question, this Court's recent practice has been to rely on Rule 74 in removing the notice of appeal from the Court file if it is determined there is no jurisdiction to permit the appeal to proceed otherwise.¹³

Pursuant to ss. 72(2)(e) and 74(d) of the *IRPA*, no appeal lies from a decision of the Federal Court on judicial review unless the Federal Court judge certifies a serious question of general importance. This ensures that appeals are based on serious questions of general importance that transcend the interests of the parties.¹⁴ The language chosen by Parliament is

¹⁰ *Ibid*, at para 86.

¹¹ *Federal Courts Act*, *supra* note 5, s 52(a).

¹² *Federal Courts Rules*, *ibid*, Rule 74; *Rock-St Laurent v Canada (MCI)*, [2012 FCA 192](#) at paras 29-32 [*Rock-St Laurent*].

¹³ *Rock-St Laurent*, *supra* note 12, at paras 32, 39; *Wong v Canada (MCI)*, [2016 FCA 229](#) at paras 5-7.

¹⁴ *IRPA*, *supra* note 1, ss 72(2)(e) and 74(d); *Kunkel v Canada (MCI)*, [2009 FCA 347](#) at paras 8-9.

unambiguous. Given that an appeal is a creature of statute and that there is no constitutional right to an appeal,¹⁵ “most attempts to avoid a statutory bar to an appeal fail.”¹⁶

There are limited exceptions to the bar against appeals without a certified question. The recognized exceptions – all of which are narrow and exemplify rule of law concerns – include a Court’s failure to exercise jurisdiction in circumstances where it must exercise it and a lack of jurisdiction owing to some fundamental flaw in the proceedings going to the root of the Court’s ability to decide the case, such as a reasonable apprehension of bias.¹⁷ This Court, however, has expressed reluctance to use the term “jurisdictional errors” to describe errors that will permit an appeal to be heard despite a preclusive clause given the uncertainties surrounding the term “jurisdiction”.¹⁸ Instead, the threshold has been described as a fundamental flaw going to the very root of the Court’s ability to decide the case or a flaw that raises serious concerns about the Court’s compliance with the rule of law.¹⁹

The identified exceptions, no matter how they are expressed, do not include “mere errors of law,”²⁰ nor do they include contentious debates over issues of statutory interpretation, exercises of judicial discretion, or the weight that should be accorded to evidence and its assessment.²¹ Moreover, these exceptions are exceedingly difficult to meet.²²

¹⁵ *Charkaoui v Canada (MCI)*, [2007 SCC 9](#), [2007] 1 SCR 350 at para [136](#).

¹⁶ *Mahjoub v Canada (MCI)*, [2011 FCA 294](#) at para [11](#).

¹⁷ *Canada (MCI) v Tennant*, [2018 FCA 132](#) at para [14](#) [*Tennant 2018*]; *Subhaschandran v. Canada (Solicitor General)*, [2005 FCA 27](#) at para [17](#); *Es-Sayyid v Canada (Public Safety and Emergency Preparedness)*, [2012 FCA 59](#) at para [28](#).

¹⁸ *Canada (MCI) v Tennant*, [2019 FCA 206](#) at para [38](#) [*Tennant 2019*]; *Tennant 2018*, *ibid*, at paras [16](#), [19-20](#); *Mahjoub v Canada (MCI)*, [2017 FCA 144](#) at paras [19-21](#) [*Mahjoub*].

¹⁹ *Tennant 2019*, *ibid*, at para [38](#); *Tennant 2018*, *ibid*, at paras [17-18](#); *Mahjoub*, *ibid*, at paras [19-21](#).

²⁰ *Tennant 2019*, *ibid*, at para [41](#); *Tennant 2018*, *ibid*, at para [15](#); *Mahjoub*, *ibid*, at para [21](#); *Canada (Citizenship and Immigration) v. Huntley*, [2011 FCA 273](#) at para [8](#).

²¹ *Tennant 2018*, *ibid*, at para [17](#).

²² *Tennant 2018*, *ibid*, at para [16](#); *Harkat v Canada (Attorney General)*, [2021 FCA 209](#) at para [37](#).

3. *Alleged errors identified in Notice of Appeal do not raise questions of jurisdiction*

CILA has not identified any jurisdictional error involving “very fundamental matters” that “strike at the rule of law.”²³ Instead, CILA has simply rebranded alleged errors of law, or mixed fact and law, as errors of jurisdiction. This is precisely what the Supreme Court has repeatedly warned against: “brand[ing] as jurisdictional, and therefore subject to broader curial review, that which may be doubtfully so”.²⁴ As CILA has failed to identify exceptions to the preclusive clauses under the *IRPA*, their Notice of Appeal should be removed from the Court file.

a. *Alleged errors re: challenge to s. 167(1) of the IRPA*

CILA argues that the Application Judge failed to exercise jurisdiction over its constitutional challenge to s. 167(1) of the *IRPA*. In support of that submission, it argues that this Court’s decision in *Bird* is inconsistent with the Application Judge’s conclusion that the ALJR did not raise a reviewable “matter” under s. 18.1 of the *Federal Courts Act*. However, CILA’s complaint is not that the Application Judge declined to exercise jurisdiction, but that he incorrectly interpreted s. 18.1 and misapplied the governing jurisprudence. This alleged error is an error of law, or mixed fact and law, regarding the interpretation of s. 18.1 of the *Federal Courts Act*, which does not constitute an exception to the preclusive clauses under the *IRPA*.²⁵

First, in characterizing CILA’s application as an independent constitutional challenge and, therefore, not a reviewable matter under s. 18.1 of the *Federal Courts Act*,²⁶ the Application Judge did not refuse to exercise jurisdiction. The Application Judge undertook a detailed review

²³ [Tennant 2018](#), *ibid*, at para [18](#).

²⁴ *CUPE, Local 963 v New Brunswick Liquor Corp*, [\[1979\] 2 SCR 227](#) (SCC) at p 233; *Canada (MCI) v Vavilov*, [2019 SCC 65](#) at para [210](#); *Mahjoub*, *supra* note 18, at para [20](#).

²⁵ [Tennant 2019](#), *supra* note 18, at para [41](#); [Tennant 2018](#), *supra* note 17, at paras [15](#), [17](#), [20](#).

²⁶ [FC decision](#), *supra* note 2, at paras [46](#), [61](#).

of the relevant jurisprudence, including this Court’s decision in *Bird*, and concluded that although a “decision” is not a prerequisite to an ALJR,²⁷ a freestanding constitutional challenge to a provision enacted by Parliament is not a reviewable “matter” under s. 18.1.²⁸ That conclusion was reached through interpretation of s. 18.1 and the application of the governing jurisprudence to the facts of the case. It was not a refusal to exercise jurisdiction.

Second, the Application Judge did not mischaracterize the essential character of CILA’s pleading by characterizing it as an independent constitutional challenge.²⁹ As noted by the Application Judge, CILA did not seek judicial review of the Ministers’ policies or guidelines or any administrative conduct.³⁰ CILA only sought to challenge the constitutionality of s. 167(1) of the *IRPA*.³¹ In any event, the Application Judge’s characterization of CILA’s pleadings was not a refusal to exercise jurisdiction.

Finally, to the extent CILA argues that the Application Judge refused to exercise jurisdiction simply by concluding that the ALJR did not raise a reviewable “matter” under s. 18.1 of the *Federal Courts Act*, that submission cannot be accepted. If it were, every determination that an ALJR fails to raise a reviewable matter under s. 18.1 could be characterized as a refusal to exercise jurisdiction and thereby appealed without a certified question. That would undermine the statutory limits on appeals established by Parliament.

²⁷ [FC Decision](#), *ibid*, at para [26](#).

²⁸ [FC Decision](#), *ibid*, at paras [46-61](#).

²⁹ CILA’s Written Submissions, p 6.

³⁰ [FC decision](#), *supra* note 2, at para [36](#).

³¹ [FC Decision](#), *ibid*, at para [46](#).

b. *Alleged errors re: challenge to Respondents’ practices*³²

CILA also argues that the Application Judge erred in concluding that the Respondents’ practices concerning the right to counsel do not constitute closely connected allegedly unlawful government conduct giving rise to a reviewable matter under s. 18.1 of the *Federal Courts Act*. In support of that submission, it argues that the Application Judge erred in finding that the Respondents’ practices (1) were not derivative of s. 167(1) of the *IRPA*; (2) were not reviewable “matters” under s. 18.1 of the *Federal Courts Act*; and (3) did not constitute a closely connected course of allegedly unlawful government action and, therefore, the ALJR was barred by Rule 302 of the *Federal Courts Rules*.³³ Again, none of these asserted errors constitute an issue of jurisdiction. Rather, each challenges the Application Judge’s interpretation and application of the governing legal principles to the facts of the case.

First, the Application Judge found that the practice of not recognizing a right to counsel beyond the rights conferred under s. 167(1) of the *IRPA* and s. 10(b) of the *Charter* “encompasses the activities of three different government departments in the performance of the distinct duties and responsibilities imposed on those departments under the *IRPA*.” The Application Judge found that the practice derives from the jurisprudence governing circumstances in which the right to counsel may arise beyond those identified at subsection 167(1), and not from s. 167(1) itself.³⁴ In no way does this finding, even if erroneous, give rise to a fundamental matter that strikes at the rule of law.

Second, the Applicant Judge determined that the practices being challenged arose in a wide range of proceedings and varying factual circumstances, and that their only common

³² As noted at paragraph 36 of the Federal Court’s decision, CILA did not challenge the Respondents’ policies or guidelines, only the “practice” of not recognizing counsel in certain immigration matters.

³³ CILA’s Written Submissions, p 9.

³⁴ [FC decision](#), *supra* note 2, at para 40.

feature was that they engaged the right to counsel. On that basis, he concluded that these practices did not constitute closely connected allegedly unlawful government conduct capable of giving rise to a reviewable matter under s. 18.1 of the *Federal Courts Act*.³⁵ That conclusion was reached by applying the governing legal test to the facts before the Application Judge. This was, at most, a finding of mixed fact and law, and therefore cannot give rise to a jurisdictional error.

The same is true of the Application Judge's conclusion pertaining to Rule 302 of the *Federal Courts Rules*. The determination that the practices challenged in the ALJR lacked sufficient commonality to satisfy Rule 302 and the decision not to waive the Rule's requirements were conclusions drawn by applying Rule 302 to the facts of the case.³⁶ Even if such conclusion were erroneous, such an error would not amount to a failure to exercise jurisdiction but, rather, an error of mixed fact and law.

4. *Finding that CILA lacked Public Interest Standing was dispositive*

In any event, the Application Judge made a second, independently dispositive finding: CILA lacked standing to bring the ALJR because it was neither a directly affected litigant nor a party that satisfied the test for public interest standing.³⁷ Accordingly, even if any of the alleged errors discussed above could properly be characterized as a refusal to exercise jurisdiction, which they cannot, the Application Judge plainly exercised its jurisdiction over the ALJR by determining that CILA lacked standing and dismissing the application on that basis.

Importantly, in applying the three-part test for public interest standing, the Application Judge found that the ALJR raised no serious justiciable issue for two reasons. One of those reasons went to the merits: the Application Judge agreed with the Ministers' submission that success on the ALJR would require it to "overturn scores of cases from this Court, the FCA and

³⁵ [FC decision](#), *ibid*, at paras [42-44](#).

³⁶ [FC Decision](#), *ibid*, at paras [42-45](#).

³⁷ [FC Decision](#), *ibid*, at para [86](#).

the SCC” holding that there is no absolute right to counsel in *IRPA* matters.³⁸ The Application Judge made clear that his standing analysis was independently dispositive of the motion to strike, stating that “had I concluded above the ALJR was not doomed to fail, I would nonetheless find that CILA cannot be granted public interest standing, and the Ministers’ motion would be allowed on this ground.”³⁹

Accordingly, even if CILA could establish that the Application Judge’s conclusions under s. 18.1 of the *Federal Courts Act* and Rule 302 amounted to a refusal to exercise jurisdiction over the various issues and challenges raised in the ALJR, which they do not, the Application Judge exercised that jurisdiction by determining that CILA lacked public interest standing. CILA does not contend that this independently dispositive determination itself involved a failure to exercise jurisdiction. Therefore, its argument that the Application Judge failed to exercise jurisdiction over the ALJR cannot succeed.

Sincerely,



Daniel Engel & Kevin Spykerman
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cc: Sujit Choudhry & Maureen Silcoff, counsel for the Appellant

³⁸ [FC Decision](#), *ibid*, at paras [70-77](#).

³⁹ [FC Decision](#), *ibid*, at para [86](#).