

August 17, 2026

Judicial Administrator
Federal Court of Appeal
180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

Via Portal

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

The Appellant offers this reply to the Respondent's submissions dated August 7, 2026, which in turn respond to the Appellant's submissions of July 23, 2026 on whether the Court may entertain this appeal.

Jurisdictional Errors

The Respondents' assertion that CILA has "simply rebranded errors of law, or mixed fact and law, as errors of jurisdiction" (p. 6), which do not fall within the exception to the preclusive clauses that allow the Court to take jurisdiction over this appeal, is incorrect. On the contrary, the Appellant raises jurisdictional errors concerning "very fundamental matters" that "strike at the rule of law".

The Application Judge's ruling on the application of section 18.1 of the *Federal Courts Act* in this matter necessarily gives rise to a question of jurisdiction—specifically, whether the Federal Court has jurisdiction under s. 18.1 of the *FCA* to permit a challenge by way of an application (as opposed to an action) to a provision of the *IRPA* that is linked to a course of conduct as evidenced by policies and practices, but without challenging specific administrative conduct. As set out in the Notice of Appeal (Grounds of Appeal, para 1a), the Application Judge ruled that he lacked jurisdiction to hear such a challenge.

As such, the Respondents' concern that, on the Appellant's argument, "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" (p. 7), is without merit. This appeal raises a fundamental question about the very nature of applications brought under section 18.1, which is distinct from the question of whether any specific reviewable matter is a jurisdictional error of law.

Public Interest Standing

The Respondents' assertion that the appeal cannot proceed because "the Application Judge exercised that jurisdiction by determining that CILA lacked public interest standing", which constitutes an "independently dispositive determination" (p. 10), is also incorrect. The Application Judge's finding on public interest standing finding was *obiter*. As he explained, his finding regarding section 18.1 was "determinative of the motion" (para. 63), and he addressed public interest standing only "in the interests of completeness" (para. 64). He stated:

[62] Having found the Ministers' alleged practice of failing to recognize the right to counsel in certain immigration contexts does not constitute a reviewable conduct, and that the independent constitutional challenge to subsection 167(1) of the IRPA is not a reviewable matter, this Court has no jurisdiction to hear the ALJR. This flaw is fatal, and as such I conclude the ALJR is bereft of any possibility of success.

[63] The Ministers also requested that the Court dismiss or strike out the ALJR on the basis that CILA does not have standing to bring the underlying application and that CILA lacks standing to seek relief under subsection 24(1) of the *Charter*. The finding that the ALJR does not raise a reviewable matter under section 18.1 of the *Act* is, however, determinative of the motion. I therefore need not consider those issues.

[64] I will nonetheless, in the interests of completeness, address the question of public interest standing. In doing so, I need not apply the principles and thresholds governing a motion seeking to strike an application for judicial review, nor finally determine, as the Ministers request, the issue of standing as a preliminary question of law under Rule 104(1)(a) (*CCR* at paras 18–30).

The Application Judge’s later statement, “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” (para. 86), must be read consistently with paragraphs 62 to 64, which clearly state that his finding on public interest standing was *obiter*.

To be clear, the Appellant did not assert that the Application Judge’s holding on public interest standing was jurisdictional, because they do not need to do so for this Court to address it. The Notice of Appeal sets out the issue of public interesting standing as an error of law (Ground of Appeal, para 2a). Moreover, the Supreme Court of Canada has held that once the Federal Court certifies a serious question of general importance under s. 74(d) of the *IRPA*, this Court can consider all issues in an appeal.¹ It follows that if this Court can hear an appeal by way of an exception to s. 74(d) on “very fundamental matters” that “strike at the rule of law”, it can likewise in parallel fashion consider all issues in an appeal, including errors of law that are not jurisdictional.

The Appellant notes that this Court will dismiss an appeal if a question before it was not properly certified, which can include a question not being dispositive of an appeal.² That concern does not apply here. The jurisdictional question raised—i.e., the application falling within the scope of section 18.1 of the *FCA*—is properly before this Court. There is no doubt that this question “arises from the issues in the case and not from the judge’s reasons”³ or that the question was not considered by the judge and is nothing more than a reference.⁴ Moreover, in the

¹ *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998 CanLII 778 \(SCC\)](#), [1998] [1 SCR 982](#) at para [25](#). See also *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999 CanLII 699 \(SCC\)](#), [1999] 2 SCR 817 at para [12](#).

² *Varela v. Canada (Minister of Citizenship and Immigration)*, [2009 FCA 145](#) at para [43](#) [*Varela*].

³ *Varela* at para [29](#).

⁴ *Canada (Minister of Citizenship and Immigration) v. Zazai*, 2004 FCA 89 at para [12](#).

Application Judge's own words, the issue was "determinative of the motion" (para. 63) and is therefore dispositive of this appeal.

Conclusion

The Court has jurisdiction to hear this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maureen Silcoff'.

Maureen Silcoff
Silcoff Shacter

A handwritten signature in black ink, appearing to read 'S. Choudhry'.

Sujit Choudhry
Circle Barristers