

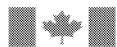


Former Inland TR Litigation

For New TR PR Team, LMB

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(Litigation Analysts)
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PROTECTED B – Internal LMB Eyes Only



Immigration, Refugees
and Citizenship Canada

Immigration, Réfugiés
et Citoyenneté Canada

Canada

Former Inland Litigation Lines of Business (LOB)

The former Inland Team managed all litigation of immigration and refugee decisions made in Canada, except for H&C decisions.

- Admissibility – Immigration Division (ID), Immigration Appeal Division (IAD)
- Criminality (A36) - Inland
- Danger Opinions
- Family Class - Inland
- Live-in Caregiver Program - Inland
- Pre-Removal Risk Assessment (PRRA)
- Permanent Resident Card
- Refugees – Refugee Protection Division (RPD) and Refugee Appeal Division (RAD)
- Temporary Residents
- Civil Suits – some linked to A77 Security Certificate cases
- Family/Provincial Courts
- Communications to International Human Rights Treaty Bodies
- Canadian Human Rights Commission (CHRC) complaints

The H&C LOB (Inland) was transferred to the LMD Citizenship and Passport team in late 2019.

Judicial Review Timelines

Applicable Timelines (Immigration)

Notice of Application for Leave and for Judicial Review	Within 15 days (inland) or 60 days (overseas)
Notice of Appearance	10 days
Rule 9 Response	“Without delay”
Applicant’s Leave Record (Affidavits and Argument)	30 days
Respondent’s Affidavits and Argument	30 days
Applicant’s Reply	10 days
Leave Order (Tribunal Record, Cross-Examinations, Further Affidavits and Argument)	No set timeline to decide leave / leave granted order sets timelines for next steps
Judicial Review Hearing	Between 30 and 90 days after leave granted

Former Inland TR Workflow Process

The Inland analysts do all!

- ALJR filed to Federal Court –includes nature of decision challenged, grounds of argument, relief sought
- DOJ seeks LMB/LMU and/or IRCC/CBSA DLSU (generally Appendix A cases & Hot Issues List) and sends assignment request to NAT-BOX
- ** Inland does **not** see **all** litigated cases. Only those cases flagged by DOJ litigators.
- NAT-BOX assigns a case by LOB and creates record in LCMS and GCDOCS
- **Analysts enter data in Litigation Tab – GCMS – only for DOJ- Prairies cases
Analysts enter “Issue Type” in LCMS (e.g. PGWP, TRP-VTIP, SP R215(1)(f)(iii), TRPR Pathway, etc. for litigation trend monitoring purposes)
- Rule 9- Rule 14 (CTR production order)- Rule 17 (CTR) requests get sent by the **Federal Court** directly to **IRCC decision-making offices in Canada**. These are handled by IRCC processing offices. On an ad hoc basis and only when the offices encounter some issues, LMB analysts are contacted for assistance/guidance for redaction/e-filing questions during these stages.

Former Inland TR Workflow Process

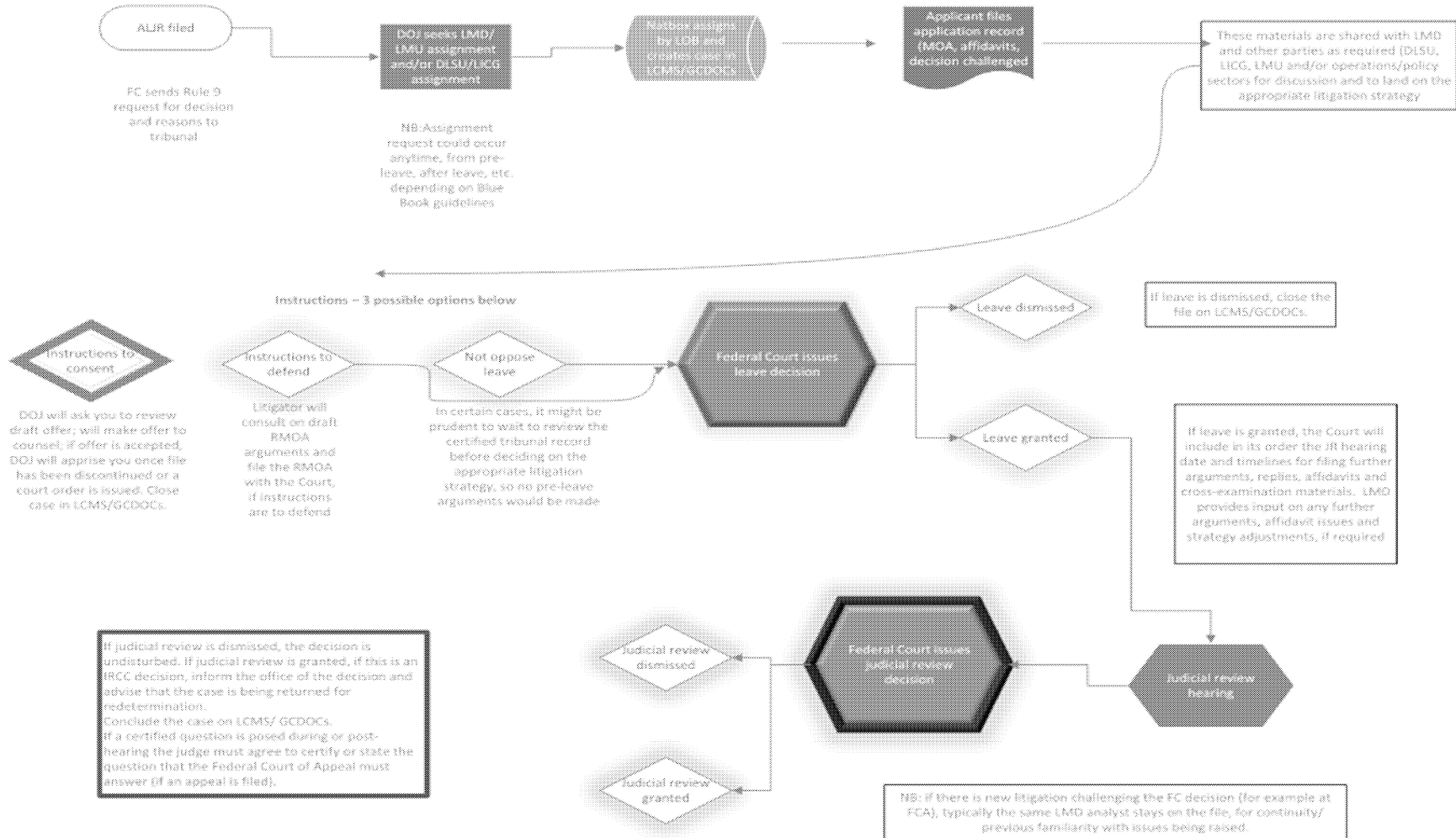
The Inland analysts do all!

- Applicant files Application Record, including decision/written reasons, MOA, affidavits
- DOJ (supposedly) sends all relevant docs to analysts for review and discussion
- **Analysts do not need to see CTRs for most in-Canada TR/PR cases
- If further info needed, consult relevant parties Ops (IPG)/policy (IB/AB)/processing office managers/supervisors (only CPC-Edmonton/CPC-Mississauga/CPC-Sydney has a litigation coordinator)

*CBSA JLOs are rarely consulted in a TR/PR litigation if/when a stay of removal motion is concurrently involved with an underlying JR.

<https://gcdocs2.ci.gc.ca/otcs/cs.exe/app/nodes/385890368/metadata/navigat>
or

LITIGATION WORKFLOW



Issue Instructions at Leave & Post-Leave

Leave stage: Consent – Not opposing leave – Defend - (various motions)

- Analysts assist litigators with identifying and preparing an affidavit/affiant if no DOJ clerical affidavit can be used
- Settlement consultation with local offices or IPG/IB/DLSU is done first (if time allows) before issuing instructions to DOJ
- **No Compliance Monitoring is done when settled unless it is required for case specific reasons
- If Leave granted: CTR production is done between the Court Registry and the local offices
- Analysts enter/update LCMS, GCDOCS, GCMS

JR hearing & outcome

- If JR granted, post-JR re-determination email to the local office
- **No Compliance Monitoring is done unless it is required for specific reasons/direct verdict.

If Certified Questions -> FCA -> SSC

Unique to Inland TR Litigation

- ❖ R183 – “maintained” (a.k.a. “implied”) status when FNs applied for an extension of their TR status prior to their authorized period ends

- ❖ R182 – “Restoration” of TR status
COVID19 Temporary Public Policy July 2020 – Aug 31, 2021 – if met certain conditions, the 90 day time limit for restoration does not apply to certain foreign nationals in Canada.

R182

(1) On application made by a visitor, worker or student within 90 days after losing temporary resident status as a result of failing to comply with a condition imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c), an officer shall restore that status if, following an examination, it is established that the visitor, worker or student meets the initial requirements for their stay, has not failed to comply with any other conditions imposed and is not the subject of a declaration made under subsection 22.1(1) of the Act.

Exception

(2) Despite subsection (1), an officer shall not restore the status of a student who is not in compliance with a condition set out in subsection 220.1(1).

- ❖ A47 TR status includes Student/Worker/Visitor class of TR status
VR-ext. – when left Canada

Reconsideration Requests

- When a person requests that their decision be reconsidered, a senior immigration officer may exercise their discretion in determining whether such reconsideration is warranted. The legal doctrine of *functus officio* does not automatically bar such reconsideration (*MCI v. Kurukkal, 2010 FCA 230*).
- Reconsideration of decisions should be limited to exceptional cases. An applicant's dissatisfaction or disagreement with the decision does not by itself make theirs an exceptional case.
- When possible, assign reconsideration requests to the original decision maker.

- Redetermination versus Reconsideration

Redetermination

- Prior decision set aside
- JR Allowed or Consent
- New assessment
- New Officer
- New submissions
- Priority processing – i.e. 'top of the pile'

Reconsideration

- Requested by Applicant (no limit to #)
- Should be same Officer if possible
- Assessment made on information in the request to reconsider
- Officer can choose not to re-open (decision upheld)

Emerging and Continuing TR Litigation Issues

1. TR to PR Pathway public policy A25.2 (May 6 – Nov 5, 2021)
2. Post Graduation Work Permit (PGWP) R205 and PDI only
3. Initial SP in-Canada under R215(1)(f)(iii)
4. Vulnerable Workers Open Work Permit (VWOWP)
5. LMIA-WP
6. Bridging Open Work Permit (BOWP)
7. TRP- VTIP/FMV
8. Increasing number of TRP (+ concurrent SP/WP) – H&C grounds/BIOC factors
9. Increasing number of mandamus – Virtual DN network as of May 2021 and work distribution

Manually tracking + LCMS “ISSUE TYPE” inland TR issues:

<http://gcdocs2.ci.gc.ca/otcs/cs.exe?func=ll&objaction=overview&objid=204010437>

****Litigation Privilege****

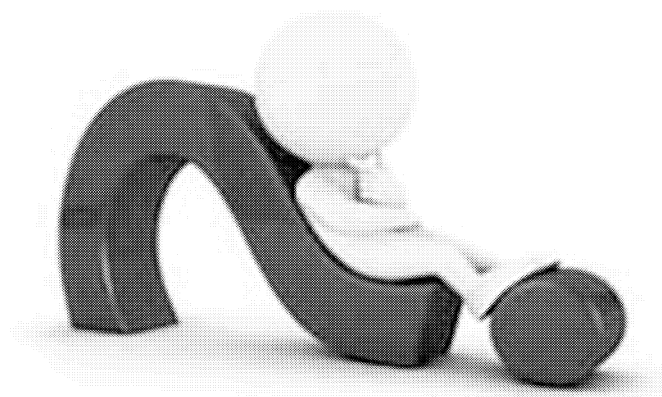
Brainstorming Ideas 4 Junior Staff

PM 2s could assist with...

- Close cases in LCMS on behalf of analysts
- Send out a post-settlement email to Domestic Network (DN) offices/ Centralized Network (CN) using a streamlined/template with a NOD on behalf of the analysts
- Draft a chronology based on the information gleaned from GCMS
- Research/search in existing folders in GCDOCS relevant case law/case summary
- Administrative/coordinating work – e.g., sorting out contact issue between the Federal Court and a local DN/CN office
- Enter Litigation Tab data in GCMS for DOJ-Prairies

Q & A

Thank you!



Any Questions?