

Federal court extends program to tackle immigration backlog

Fast-track hearings being offered to deal with growing mountain of contended decisions stuck in the system

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A pilot project meant to reduce the immigration backlog in the federal court system will be extended till at least the end of the year because few lawyers have so far taken advantage of it.

Last June, the Federal Court of Canada launched a pilot in Toronto to fast-track appeals of visa rejections — for permanent or temporary residence, for work and study — by limiting the normally 75-minute hearings to just 45 minutes.

Federal court spokesperson and legal counsel Andrew Baumberg said

the point of the initiative "is to expedite access to justice by substantially reducing the time to a hearing and disposition."

As of the end of April, only 23 cases were signed up for the program. Just eight of those actually proceeded, and the rest were either rejected by the opposing party or withdrawn by the appellants.

The court has a huge and growing immigration caseload; more than two-thirds of its cases involve immigration and refugee matters.

By the end of March, there were 5,245 immigration-related files in the system awaiting judicial review

— 1,870 involving refugees, and 3,375 involving visa applications.

That was more than double the total of five years ago (1,261 refugee files and 935 immigration files) — an indication that negative and disputed decisions are on the rise.

An individual objecting to an immigration decision first needs to be granted leave to appeal by the court, before the dispute can be reviewed by a judge.

Under the pilot program, leave judges must first grant leave to appeal, then identify cases to be fast-tracked and schedule a hearing within 45 to 60 days (if there are no further submissions), or 60 to 70 days if further submissions are required. Both sides must consent to the fast-tracked process and can opt out up

until the date of the hearing.

If it's a relatively straightforward file, the appeal process is speeded up by several months.

"Based on the feedback that we received, it appears that the principal reason (for low uptake) is limited awareness of the pilot project" by lawyers, said Baumberg, who added: "We are working with the bar to address this."

The pilot project will be extended to at least the end of the year, he said. "It appears that similar pilot projects in other areas have taken up to two years to get off the ground."

Lawyer Mario Bellissimo, chair of the Canadian Bar Association's national immigration section, said Federal Court Chief Justice Paul Crampton had met with his members at its

recent annual conference in May to explain and promote the program.

Bellissimo said what hinders the effectiveness of the pilot is that cases are only expedited after a leave is granted, but it takes an average of 200 days to get leave — and 90 days more to get a hearing.

He said massive changes the federal government has made to the immigration system in recent years have resulted in a surge of contended cases that clogged the system and led to a ballooning backlog.

Baumberg said there are 31 full-time judges, along with five supernumerary judges and six prothonotaries. Two judicial positions are now vacant as a result of a retirement and adoption by a judge of supernumerary status.