

# PART 54

## JUDICIAL REVIEW AND STATUTORY REVIEW

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## I JUDICIAL REVIEW

### SCOPE AND INTERPRETATION

- 54.1
- (1) This Section of this Part contains rules about judicial review.
  - (2) In this Section –
    - (a) a ‘claim for judicial review’ means a claim to review the lawfulness of –
      - (i) an enactment; or
      - (ii) a decision, action or failure to act in relation to the exercise of a public function.
    - (b) an order of mandamus is called a ‘mandatory order’;
    - (c) an order of prohibition is called a ‘prohibiting order’;
    - (d) an order of certiorari is called a ‘quashing order’;
    - (e) ‘the judicial review procedure’ means the Part 8 procedure as modified by this Section;
    - (f) ‘interested party’ means any person (other than the claimant and defendant) who is directly affected by the claim; and
    - (g) ‘court’ means the High Court, unless otherwise stated.
- (Rule 8.1(6)(b) provides that a rule or practice direction may, in relation to a specified type of proceedings, disapply or modify any of the rules set out in Part 8 as they apply to those proceedings)

### WHEN THIS SECTION MUST BE USED

- 54.2
- The judicial review procedure must be used in a claim for judicial review where the claimant is seeking –
- (a) a mandatory order;
  - (b) a prohibiting order;
  - (c) a quashing order; or
  - (d) an injunction under section 30 of the Supreme Court Act 1981<sup>1</sup> (restraining a person from acting in any office in which he is not entitled to act).

### WHEN THIS SECTION MAY BE USED

- 54.3
- (1) The judicial review procedure may be used in a claim for judicial review where the claimant is seeking –
    - (a) a declaration; or
    - (b) an injunction<sup>(GL)</sup>.

<sup>1</sup> 1981 c.54.

(Section 31(2) of the Supreme Court Act 1981 sets out the circumstances in which the court may grant a declaration or injunction in a claim for judicial review)

(Where the claimant is seeking a declaration or injunction in addition to one of the remedies listed in rule 54.2, the judicial review procedure must be used)

(2) A claim for judicial review may include a claim for damages but may not seek damages alone.

(Section 31(4) of the Supreme Court Act sets out the circumstances in which the court may award damages on a claim for judicial review)

## PERMISSION REQUIRED

54.4 The court's permission to proceed is required in a claim for judicial review whether started under this Section or transferred to the Administrative Court.

## TIME LIMIT FOR FILING CLAIM FORM

54.5 (1) The claim form must be filed –

- (a) promptly; and
- (b) in any event not later than 3 months after the grounds to make the claim first arose.

(2) The time limit in this rule may not be extended by agreement between the parties.

(3) This rule does not apply when any other enactment specifies a shorter time limit for making the claim for judicial review.

## CLAIM FORM

54.6 (1) In addition to the matters set out in rule 8.2 (contents of the claim form) the claimant must also state –

- (a) the name and address of any person he considers to be an interested party;
- (b) that he is requesting permission to proceed with a claim for judicial review; and
- (c) any remedy (including any interim remedy) he is claiming.

(Part 25 sets out how to apply for an interim remedy)

(2) The claim form must be accompanied by the documents required by the relevant practice direction.

## SERVICE OF CLAIM FORM

54.7 The claim form must be served on –

- (a) the defendant; and

- (b) unless the court otherwise directs, any person the claimant considers to be an interested party,  
within 7 days after the date of issue.

## ACKNOWLEDGMENT OF SERVICE

54.8

- (1) Any person served with the claim form who wishes to take part in the judicial review must file an acknowledgment of service in the relevant practice form in accordance with the following provisions of this rule.
- (2) Any acknowledgment of service must be –
  - (a) filed not more than 21 days after service of the claim form; and
  - (b) served on –
    - (i) the claimant; and
    - (ii) subject to any direction under rule 54.7(b), any other person named in the claim form,  
as soon as practicable and, in any event, not later than 7 days after it is filed.
- (3) The time limits under this rule may not be extended by agreement between the parties.
- (4) The acknowledgment of service –
  - (a) must –
    - (i) where the person filing it intends to contest the claim, set out a summary of his grounds for doing so; and
    - (ii) state the name and address of any person the person filing it considers to be an interested party; and
  - (b) may include or be accompanied by an application for directions.
- (5) Rule 10.3(2) does not apply.

## FAILURE TO FILE ACKNOWLEDGMENT OF SERVICE

54.9

- (1) Where a person served with the claim form has failed to file an acknowledgment of service in accordance with rule 54.8, he –
  - (a) may not take part in a hearing to decide whether permission should be given unless the court allows him to do so; but
  - (b) provided he complies with rule 54.14 or any other direction of the court regarding the filing and service of –
    - (i) detailed grounds for contesting the claim or supporting it on additional grounds; and
    - (ii) any written evidence,  
may take part in the hearing of the judicial review.

- (2) Where that person takes part in the hearing of the judicial review, the court may take his failure to file an acknowledgment of service into account when deciding what order to make about costs.
- (3) Rule 8.4 does not apply.

## PERMISSION GIVEN

- 54.10 |
- (1) Where permission to proceed is given the court may also give directions.
  - (2) Directions under paragraph (1) may include a stay<sup>(GL)</sup> of proceedings to which the claim relates.
- (Rule 3.7 provides a sanction for the non-payment of the fee payable when permission to proceed has been given)

## SERVICE OF ORDER GIVING OR REFUSING PERMISSION

- 54.11 |
- The court will serve –
- (a) the order giving or refusing permission; and
  - (b) any directions,
- on –
- (i) the claimant;
  - (ii) the defendant; and
  - (iii) any other person who filed an acknowledgment of service.

## PERMISSION DECISION WITHOUT A HEARING

- 54.12 |
- (1) This rule applies where the court, without a hearing –
    - (a) refuses permission to proceed; or
    - (b) gives permission to proceed –
      - (i) subject to conditions; or
      - (ii) on certain grounds only.
  - (2) The court will serve its reasons for making the decision when it serves the order giving or refusing permission in accordance with rule 54.11.
  - (3) The claimant may not appeal but may request the decision to be reconsidered at a hearing.
  - (4) A request under paragraph (3) must be filed within 7 days after service of the reasons under paragraph (2).
  - (5) The claimant, defendant and any other person who has filed an acknowledgment of service will be given at least 2 days' notice of the hearing date.

## DEFENDANT ETC. MAY NOT APPLY TO SET ASIDE<sup>(GL)</sup>

- 54.13 Neither the defendant nor any other person served with the claim form may apply to set aside<sup>(GL)</sup> an order giving permission to proceed.

## RESPONSE

- 54.14
- (1) A defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve –
    - (a) detailed grounds for contesting the claim or supporting it on additional grounds; and
    - (b) any written evidence,
 within 35 days after service of the order giving permission.
  - (2) The following rules do not apply –
    - (a) rule 8.5 (3) and 8.5 (4) (defendant to file and serve written evidence at the same time as acknowledgment of service); and
    - (b) rule 8.5 (5) and 8.5(6) (claimant to file and serve any reply within 14 days).

## WHERE CLAIMANT SEEKS TO RELY ON ADDITIONAL GROUNDS

- 54.15 The court's permission is required if a claimant seeks to rely on grounds other than those for which he has been given permission to proceed.

## EVIDENCE

- 54.16
- (1) Rule 8.6 (1) does not apply.
  - (2) No written evidence may be relied on unless –
    - (a) it has been served in accordance with any –
      - (i) rule under this Section; or
      - (ii) direction of the court; or
    - (b) the court gives permission.

## COURT'S POWERS TO HEAR ANY PERSON

- 54.17
- (1) Any person may apply for permission –
    - (a) to file evidence; or
    - (b) make representations at the hearing of the judicial review.
  - (2) An application under paragraph (1) should be made promptly.

## JUDICIAL REVIEW MAY BE DECIDED WITHOUT A HEARING

- 54.18 The court may decide the claim for judicial review without a hearing where all the parties agree.

## COURT'S POWERS IN RESPECT OF QUASHING ORDERS

- 54.19
- (1) This rule applies where the court makes a quashing order in respect of the decision to which the claim relates.
  - (2) The court may –
    - (a) remit the matter to the decision-maker; and
    - (b) direct it to reconsider the matter and reach a decision in accordance with the judgment of the court.
  - (3) Where the court considers that there is no purpose to be served in remitting the matter to the decision-maker it may, subject to any statutory provision, take the decision itself.
- (Where a statutory power is given to a tribunal, person or other body it may be the case that the court cannot take the decision itself)

## TRANSFER

- 54.20
- The court may
- (a) order a claim to continue as if it had not been started under this Section; and
  - (b) where it does so, give directions about the future management of the claim.
- (Part 30 (transfer) applies to transfers to and from the Administrative Court)

## II STATUTORY REVIEW UNDER THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

### SCOPE AND INTERPRETATION

- 54.21
- (1) This Section of this Part contains rules about applications to the High Court under section 101(2) of the Nationality, Immigration and Asylum Act 2002<sup>1</sup> for a review of a decision of the Immigration Appeal Tribunal on an application for permission to appeal from an adjudicator.
  - (2) In this Section –
    - (a) ‘the Act’ means the Nationality, Immigration and Asylum Act 2002;
    - (b) ‘adjudicator’ means an adjudicator appointed for the purposes of Part 5 of the Act;
    - (c) ‘applicant’ means a person applying to the High Court under section 101(2) of the Act;
    - (d) ‘other party’ means the other party to the proceedings before the Tribunal; and
    - (e) ‘Tribunal’ means the Immigration Appeal Tribunal.

<sup>1</sup> 2002 c.41.

## APPLICATION FOR REVIEW

- 54.22
- (1) An application under section 101(2) of the Act must be made to the Administrative Court.
  - (2) The application must be made by filing an application notice.
  - (3) The applicant must file with the application notice –
    - (a) the immigration or asylum decision to which the proceedings relate, and any document giving reasons for that decision;
    - (b) the grounds of appeal to the adjudicator;
    - (c) the adjudicator's determination;
    - (d) the grounds of appeal to the Tribunal together with any documents sent with them;
    - (e) the Tribunal's determination on the application for permission to appeal; and
    - (f) any other documents material to the application which were before the adjudicator.
  - (4) The applicant must also file with the application notice written submissions setting out –
    - (a) the grounds upon which it is contended that the Tribunal made an error of law; and
    - (b) reasons in support of those grounds.

## TIME LIMIT FOR APPLICATION

- 54.23
- (1) The application notice must be filed not later than 14 days after the applicant is deemed to have received notice of the Tribunal's decision in accordance with rules made under section 106 of the Act.
  - (2) The court may extend the time limit in paragraph (1) in exceptional circumstances.
  - (3) An application to extend the time limit must be made in the application notice and supported by written evidence verified by a statement of truth.

## SERVICE OF APPLICATION

- 54.24
- (1) The applicant must serve on the Tribunal copies of the application notice and written submissions.
  - (2) Where an application is for review of a decision by the Tribunal to grant permission to appeal, the applicant must serve on the other party copies of –
    - (a) the application notice;
    - (b) the written submissions; and



- (c) all the documents filed in support of the application, except for documents which come from or have already been served on that party.
- (3) Where documents are required to be served under paragraphs (1) and (2), they must be served as soon as practicable after they are filed.

## DETERMINING THE APPLICATION

54.25

- (1) The application will be determined by a single judge without a hearing, and by reference only to the written submissions and the documents filed with them.
- (2) If the applicant relies on evidence which was not submitted to the adjudicator or the Tribunal, the court will not consider that evidence unless it is satisfied that there were good reasons why it was not submitted to the adjudicator or the Tribunal.
- (3) The court may affirm or reverse the Tribunal's decision.
- (4) Where the Tribunal refused permission to appeal, the court will reverse the Tribunal's decision only if it is satisfied that –
  - (a) the Tribunal may have made an error of law; and
  - (b) either –
    - (i) the appeal would have a real prospect of success; or
    - (ii) there is some other compelling reason why the appeal should be heard.
- (5) Where the Tribunal granted permission to appeal, the court will reverse the Tribunal's decision only if it is satisfied that –
  - (a) the appeal would have no real prospect of success; and
  - (b) there is no other compelling reason why the appeal should be heard.
- (6) If the court reverses the Tribunal's decision to refuse permission to appeal –
  - (a) the court's order will constitute a grant of permission to appeal to the Tribunal; and
  - (b) the court may limit the grant of permission to appeal to specific grounds.
- (7) The court's decision shall be final and there shall be no appeal from that decision or renewal of the application.

## SERVICE OF ORDER

54.26

- (1) The court will send copies of its order to –
  - (a) the applicant, except where paragraph (2) applies;
  - (b) the other party; and
  - (c) the Tribunal.

- (2) Where –
  - (a) the application relates, in whole or in part, to a claim for asylum;
  - (b) the Tribunal refused permission to appeal; and
  - (c) the court affirms the Tribunal’s decision,
 the court will send a copy of its order to the Secretary of State, who must serve the order on the applicant.
- (3) Where the Secretary of State has served an order in accordance with paragraph (2), he must notify the court on what date and by what method the order was served.
- (4) If the court issues a certificate under section 101(3)(d) of the Act, it will send a copy of the certificate together with the order to –
  - (a) the persons to whom it sends the order under paragraphs (1) and (2); and
  - (b) if the applicant is in receipt of public funding, the Legal Services Commission.

## COSTS

54.27

The court may reserve the costs of the application to be determined by the Tribunal.