Law Reform Commission of Canada
Commission de réforme du droit du Canada

REPORT

obtaining reasons before applying for judicial scrutiny - immigration appeal board

18

Canada

REPORT 18

OBTAINING REASONS BEFORE APPLYING FOR JUDICIAL SCRUTINY — IMMIGRATION APPEAL BOARD

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Catalogue No. J31-38/1982
ISBN 0-662-52106-4

November, 1982

The Honourable Mark MacGuigan, P.C., M.P.,
Minister of Justice
and Attorney General of Canada,
Ottawa, Canada.

Dear Mr. Minister:

In accordance with the provisions of section 16 of the *Law Reform Commission Act*, we have the honour to submit herewith this report, with our recommendations derived from the Commission's studies on obtaining reasons from the Immigration Appeal Board before applying for judicial scrutiny of its proceedings.

Yours respectfully,

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Vice-President

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Introduction

As part of its project on the Ongoing Modernization of the Statutes of Canada, the Law Reform Commission monitors issues arising from the interpretation and day-to-day operation of federal laws. This brief Report is directed to a narrow procedural problem which recently has been brought to our attention and which we feel is in need of prompt rectification. Although not of major proportions, it nonetheless is a practical problem which is causing serious difficulty for some less fortunate individuals who come into contact with one segment of the federal administrative system, the Immigration Appeal Board. We think this problem can be readily solved with minor statutory amendments, without the necessity of further study. Consequently, we are addressing the issue now rather than awaiting the formulation of a Report on our general study of independent administrative agencies.

The Problem

Federal agencies[1] make thousands of determinations every day, pursuant to powers conferred by one federal statute or another. We have identified thirty-six statutes which provide for an appeal from such determinations, either by leave or as of right. In a few cases, an appeal lies directly to the Supreme Court of Canada;[2] in others, to the Governor in Council.[3] More often, however, the appeal lies to one of the divisions of the Federal Court of Canada.[4]

As well, review of an agency determination which is not appealable under an express statutory provision may be effected either by the Trial Division of the Federal Court, under section 18 of the *Federal Court Act*, or by the Federal Court of Appeal under section 28 of that Act.[5]

These provisions for scrutiny by the Federal Court of an agency determination usually establish a specific time limitation, ranging in most cases between ten days and six months after the determination is made,[6] within which action against the determination must be taken. While it is not in every case that a party to a proceeding before an administrative agency is entitled by law to receive the reasons for the determination, frequently parties do have such a right. It is an important one, particularly where the decision is open to judicial scrutiny. Access to that scrutiny can be rendered useless if one does not know the case one has to meet.[7] An applicant should not be expected to formulate an informed presentation where he has not been given the reasons for the decision he is challenging. This is especially true where judicial scrutiny may be obtained by leave only, and the applicant has to convince the court of the merits of his case.

It is not surprising, therefore, that in those cases in which a right to reasons exists under the present law, the parties in most cases will have been supplied with the reasons for the determination, or will have been made sufficiently aware of the issues to enable an informed decision to be made before the expiration of the period during which the determination can be challenged. This appears to be so even though limitation periods seldom are expressed by statute to run from the day reasons for the decision are given.[8] In many cases, limitation periods are long enough to afford ample time to obtain reasons after the decision is made;[9] in others, regulations or agency practice ensure that reasons are available before a decision to challenge the determination need be made.

There are, however, cases which have been drawn to our attention in which a party has had by law a right to receive reasons, and yet has not received those reasons prior to the expiry of the period during which judicial scrutiny of the determination must be initiated. We have identified two statutes[10] under which such cases have arisen, each lacking appropriate safeguards to prevent compromising the efficacy and fairness of the provisions they contain for judicial scrutiny of agency determinations. These statutes are the *Immigration Act, 1976* and the *Federal Court Act*. The problem will be discussed in greater detail in relation to each.

The *Immigration Act, 1976*

The Immigration Appeal Board must give reasons for its decisions but, with one exception, only if reasons are requested.[11] Moreover, even in the case of sponsorship appeals where reasons are mandatory,[12] the Board does not give reasons *with* its decision.

Reasons where requested must be prepared; in practice, they will not be available for at least two weeks, and in some

cases for ten weeks or even longer, after the decision has been made. However, section 84 of the *Immigration Act, 1976*, which provides for the possibility of appeal to the Federal Court of Appeal from a decision of the Board, requires that an application for leave to appeal be filed within fifteen days of the making of the Board's decision.[13] Since the appeal period runs from the time the decision is pronounced, it will, in all likelihood, have expired if the person contemplating the appeal waits to receive the reasons and study them before applying for leave to appeal. Accordingly, when the Board's decision is made, the prospective applicant has two possible courses of action available to preserve his right to apply for leave to appeal.

First, the applicant may ask the court to exercise its discretion to grant an extension of time in which to apply for leave to appeal. It might have been thought that the unavailability of reasons to which one is entitled by law would have been a circumstance prompting the court to grant relief, especially given the restricted time period. Time and again, however, the Federal Court of Appeal has said that the unavailability of reasons is not a sufficiently "special" circumstance to warrant an extension of the time in which to apply for leave to appeal.[14]

Alternatively, the applicant may file for leave to appeal before the expiry of the limitation period, but without the benefit of having studied the Board's reasons.[15] Unnecessary, ill-informed applications are filed. They may be withdrawn when the Board's reasons are finally made available and reveal no plausible ground for intervention by the Federal Court. If not, they will have to be dealt with at a hearing for which there is little, if any, justification. In either case, this wastes the applicant's time and money and uselessly occupies the court's resources with cases which should not have arisen in the first place.[16]

The *Federal Court Act*

A similar problem arises in connection with applications for judicial review under section 28 of the *Federal Court Act*. There

is a ten-day limitation period[17] in which to file a notice of application, commencing when the decision is communicated to the person affected. Where there is no requirement that the reasons be made available at the same time as the decision is rendered, that person could be forced to decide whether or not to seek review without having had an opportunity to examine the reasons for the decision. While our research indicates that this situation does not in practice arise with respect to most agency determinations, it is of some concern with respect to decisions of the Immigration Appeal Board, and has arisen in at least one, apparently isolated, case involving the Canada Labour Relations Board.[18]

Applications for review of Immigration Appeal Board decisions which are not open to appeal under section 84 of the *Immigration Act, 1976* are becoming increasingly common. The vast majority of these section 28 applications is generated by decisions with respect to refugee status redetermination.[19] Review of these redetermination decisions is available only by means of section 28 of the *Federal Court Act*.[20]

Again, while the Board has a duty to give reasons if requested,[21] they are rarely, if ever, available within the restricted time period established by subsection 28(2) of the *Federal Court Act*. If the applicant waits to receive reasons before filing his notice for review, the ten-day limitation period in which to apply for review as of right will, in most cases, have run. The Federal Court of Appeal appears to be no more receptive to a request made under subsection 28(2) for an extension of time than it is to one made pursuant to section 84 of the *Immigration Act, 1976*.[22]

Again, counsel may file an uninformed application in order to preserve the right to seek review. While there is no requirement that the notice of application specify grounds, if the application is subsequently withdrawn after the Board's reasons are made available or if an unnecessary hearing must be held, the time and resources of both the applicant and the court will have been wasted.[23]

The Solution

Two approaches may be taken to the solution of this problem. The first would involve the imposition of a duty upon the Immigration Appeal Board to give reasons with *all of its decisions*. We have recommended in Working Paper No. 25 that agencies give reasons "at least when requested",[24] but a more stringent requirement might be considered necessary here because of the importance of the timing of the delivery of the reasons. In that case, the present provisions under which the Board's reasons are given only upon request[25] would have to be changed.

Having to give reasons with all decisions would probably not increase the Board's workload significantly. Indeed, it appears that the Board already gives written reasons in ninety per cent of all matters coming before it.[26] Furthermore, if reasons were given in all cases, certain economies of time probably could be realized: the need to process requests for reasons would no longer arise, and the fact that Board members would know that reasons must be produced in all cases would minimize the need for them to re-immerse themselves in the facts of the case, as they no doubt have to do now. Such a practice would also be a useful exercise in arriving at the decision itself, possibly resulting in fewer challenges of Board decisions.

However, on three grounds, we stop short of recommending that the statute be amended to require that reasons be given with all decisions. First, it is not necessary to implement such a broad recommendation in order to solve the narrow problem at hand. Second, we intend to return to the question of reasons for decisions in a forthcoming Report. Finally, we think that more attention should be devoted to the practical ramifications of

imposing a duty on an agency to give reasons in all cases *with* its decisions. For example, imposing such a duty on the Immigration Appeal Board might well cause delay in rendering decisions, with all the attendant uncertainty this could create. Thus, although we doubt that the giving of reasons in all cases would have a significant impact on the Board's workload, it could be that the imposition of a duty to give those reasons *with* the decision would cause as yet unidentified difficulties in the immigration system, both for immigrants and administrators.

The alternate approach, and the one we recommend for the solution of this problem, is to make minor procedural amendments to those statutory provisions of the *Immigration Act, 1976* and the *Federal Court Act* which provide for statutory appeal and judicial review of the Immigration Appeal Board's decisions. Each Act will be dealt with in turn.

The *Immigration Act, 1976*

The *Immigration Act, 1976* provides the only instance we have found of a statutory appeal provision giving rise *in practice* to the problem we have described. The amendment we recommend is a simple one. In our view, it will solve the problem without unduly extending the period in which an appeal must be commenced; therefore, it will not undermine the usefulness of the strict limitation period which the statute provides. Nor will it impose on the Board a more extensive obligation to give reasons for its decisions, or create more onerous time constraints for their delivery.

In our opinion, the establishment of a two-tier limitation period would provide an effective solution to this problem. Filing a request for reasons within the normal fifteen-day limitation period should automatically extend the limitation period until fifteen days have elapsed from the time the applicant actually receives the reasons. One would still be entitled to reasons outside

the existing limitation period, but could not file for leave to appeal without first having obtained from the court an extension of the time for filing, as it is presently the case.

It is important, we think, that the period established for requesting reasons so as to extend the limitation period be the same as the normal limitation period. If it were shorter, for example ten days, there would be a five-day period in which the problem we have attempted to solve would continue to exist. If it were longer, it would operate to revive a limitation *after* it had run. Therefore,

> **We recommend that section 84 of the *Immigration Act, 1976* be amended to provide that the limitation period within which an applicant must file for leave to appeal under that section be extended to fifteen days after he receives the reasons, if he files a request for reasons within fifteen days of the time at which the decision is rendered.**

A suggested wording for the legislative amendment to implement this recommendation follows:

> Section 84 of the *Immigration Act, 1976* is amended by the addition of the following subsection:
>
> > (2) Notwithstanding subsection (1), where reasons are requested pursuant to subsection 65(3) within fifteen days of the disposition of an appeal, the application for leave to appeal may be filed within fifteen days after the reasons are first communicated to the applicant, or within such extended time as a judge of the Federal Court of Appeal may, for special reasons, allow.

The *Federal Court Act*

We propose a similar minor procedural amendment to section 28 of the *Federal Court Act*. Although the emphasis in this

Report has been on Immigration Appeal Board decisions, the right to judicial review arises under the *Federal Court Act*, not the *Immigration Act, 1976*, and it is section 28 which is the source of the problem. It is also apparent that an amendment to section 28 would not only solve this problem, but would eliminate potential occurrences arising out of the decisions of other agencies.[27] As was noted earlier, we are aware of one instance arising in relation to another board.[28] Again, for the same reasons as given in support of the recommendation to amend section 84 of the *Immigration Act, 1976*, we think that the limitation period for filing an application for review under section 28 and the period during which a request for reasons operates to extend that limitation period should be the same. Therefore,

> **We recommend that section 28 of the *Federal Court Act* be amended to provide that the limitation period within which an applicant must file a notice of application for review be extended to ten days after he receives reasons, if he is entitled by law to these reasons and he files a request for reasons within ten days of the time at which the decision was communicated to the parties affected.**

A suggested wording for the legislative amendment to implement this recommendation follows:

> Section 28 of the *Federal Court Act* is amended by adding immediately after subsection (2) thereof, the following subsection:
>
> (2.1) Notwithstanding subsection (2),
>
> (*a*) where a party is entitled to be given reasons for a decision or order, and
>
> (*b*) in those cases where a party is entitled to such reasons upon request, where such reasons are requested by any party within ten days of the time the decision or order was first communicated to that party,
>
> the application may be made by filing a notice of the application in the Court within ten days of the time the reasons are first communicated to the party filing, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiry of those ten days, fix or allow.

Conclusion

Immigration Appeal Board decisions will always be subjected to challenges in the Federal Court because they touch upon vital issues of status. In our opinion, the recommendations we make would provide for fairer appellate and review procedures. They could also bring about a reduction in the number of applications for judicial scrutiny of Immigration Appeal Board decisions which might well exceed the current number of withdrawals of such applications. We see two reasons for this.

First, persons affected by the decision would no longer be ignorant of the Board's reasoning when they decide whether or not to take further action. It is not unreasonable to think that if the reasons are available to the prospective applicant and counsel, the latter will be in a better position to advise as to the merits of any further proceedings. Human nature is such that it is easier to convince a client not to proceed initially than to convince him to stop a wheel which has already been put in motion.

Second, the fact that many of these cases are financed through legal aid plans could also bring about a significant reduction in the number of applications if reasons were made available in advance. Legal aid resources are already overextended. Consequently, it is to be expected that those entrusted with the duty of approving applications for legal aid would quickly balk at the idea of supplying funds for cases in which the reasons given by the Board reveal little chance of success in the Federal Court.

The recommendations we have put forward, in our opinion, would make the current system fairer, more efficient and more economical. We urge that they be proceeded with forthwith.

Acknowledgments

The Commission is pleased to accord public recognition to those persons and groups who drew the problem presented in this Report to our attention and who related the practical difficulties experienced by themselves and their clients because of it. We are grateful to them for that help and for their practical suggestions in formulating the solution.

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The Immigration Subsection of the Manitoba Bar Association.

The Commission also acknowledges with gratitude the expert advice and counsel which we were accorded by these knowledgeable persons:

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Mr. Brian A. Crane, Q.C., Gowling & Henderson, Ottawa;

Ms. Susan Devine, Manitoba Legal Aid; and

Mr. Michael S. Schelew, Canadian Section (English Speaking) of Amnesty International.

Endnotes

1. This term is used in the broad sense to include all of the federal decision-making entities covered by the definition of "federal board, commission or other tribunal" in section 2 of the *Federal Court Act*, R.S.C. 1970, 2nd Supp., c. 10. For a discussion of this matter, see our Working Paper No. 25: *Independent Administrative Agencies* (1980), at pp. 2-4.

2. *Oil and Gas Production and Conservation Act*, R.S.C. 1970, c. O-4, s. 41; *Canada Pension Plan*, R.S.C. 1970, c. C-5, s. 30.

3. *Industrial Design Act*, R.S.C. 1970, c. I-8, s. 6; *Loan Companies Act*, R.S.C. 1970, c. L-12, s. 69; *Small Loans Act*, R.S.C. 1970, c. S-11, s. 5 (to be repealed by S.C. 1980-81-82, c. 43); *Trust Companies Act*, R.S.C. 1970, c. T-16, s. 71.

4. *Aeronautics Act*, R.S.C. 1970, c. A-3, s. 14 (see also ss. 4, 5, 64 of the *National Transportation Act*, R.S.C. 1970, c. N-17); *Anti-dumping Act*, R.S.C. 1970, c. A-15, s. 20; *Broadcasting Act*, R.S.C. 1970, c. B-11, s. 26; *Canada Grain Act*, S.C. 1970-71-72, c. 7, s. 83; *Canada Oil and Gas Act*, S.C. 1980-81-82, c. 81, s. 43; *Canada Pension Plan*, *supra*, note 2, s. 37 (see also ss. 172 and 241 of the *Income Tax Act*, S.C. 1970-71-72, c. 63); *Canadian and British Insurance Companies Act*, R.S.C. 1970, c. I-15, ss. 78, 125, 152; *Citizenship Act*, S.C. 1974-75-76, c. 108, s. 13; *Cooperative Credit Associations Act*, R.S.C. 1970, c. C-29, s. 61; *Customs Act*, R.S.C. 1970, c. C-40, s. 48; *Defence Production Act*, R.S.C. 1970, c. D-2, ss. 18, 20; *Dominion Water Power Act*, R.S.C. 1970, c. W-6, s. 8; *Excise Tax Act*, R.S.C. 1970, c. E-13, s. 60; *Foreign Insurance Companies Act*, R.S.C. 1970, c. I-16, ss. 9, 34; *Government Railways Act*, R.S.C. 1970, c. G-11, s. 16; *Immigration Act, 1976*, S.C. 1976-77, c. 52, s. 84; *Income Tax Act*, *supra*, s. 172, subs. 241(6); *Indian Act*, R.S.C. 1970, c. I-6, s. 47; *Investment Companies Act*, S.C. 1970-71-72, c. 33, s. 23; *Loan Companies Act*, *supra*, note 3, s. 74; *National Energy Board Act*, R.S.C. 1970, c. N-6,

s. 18; *National Transportation Act, supra*, s. 64; *Northern Inland Waters Act*, R.S.C. 1970, 1st Supp., c. 28, s. 21; *Northern Pipeline Act*, S.C. 1977-78, c. 20, s. 27; *Patent Act*, R.S.C. 1970, c. P-4, ss. 19, 20, 33, 41, 44, 73; *Pension Benefits Standards Act*, R.S.C. 1970, c. P-8, s. 15; *Petroleum Administration Act*, S.C. 1974-75-76, c. 47, s. 17; *Public Servants Inventions Act*, R.S.C. 1970, c. P-31, s. 5; *Railway Act*, R.S.C. 1970, c. R-2, subs. 320(12), s. 408 (see also ss. 4, 5, 64 of the *National Transportation Act, supra* and s. 14 of the *Canadian Radio-television and Telecommunications Commission Act*, S.C. 1974-75-76, c. 49); *Trade Marks Act*, R.S.C. 1970, c. T-10, s. 56; *Transport Act*, R.S.C. 1970, c. T-14, s. 4 (see also ss. 4, 5, 64 of the *National Transportation Act, supra*); *Trust Companies Act, supra*, note 3, s. 78; *Western Grain Stabilization Act*, S.C. 1974-75-76, c. 87, s. 29.

5. A discussion of the difficulties surrounding sections 18 and 28 and of which decisions may be reviewed pursuant to these provisions, is not within the scope of this Report: see our Report No. 14 on *Judicial Review and the Federal Court* (1980) and the detailed treatment of this topic in the Commission publication entitled *The Federal Court Act: Administrative Law Jurisdiction* (1977) by David J. Mullan. Furthermore, it is important to note that section 29 of the *Federal Court Act* prohibits judicial review under section 28 to the extent that another federal statute provides for an appeal of the decision in question. Thus, section 28 review and statutory appeal with respect to the same decision would only be available, if at all, vis-à-vis different aspects of that decision: see Mullan, *supra*, p. 11.

6. Usually, both at common law and by statute, the limitation period runs from the day the determination is made. At common law, an application for relief by means of one of the prerogative writs must be made within a "reasonable time" after the *proceedings*, or after the *decision* is given. What constitutes a reasonable time will vary widely depending on the facts. See for example, *P.P.G. Industries Canada Ltd.* v. *The Attorney General of Canada*, [1976] 2 S.C.R. 739; *Re Ursaki* (1960), 24 D.L.R. (2d) 761 (B.C.S.C.); *The Queen* v. *Board of Broadcast Governors* (1962), 33 D.L.R. (2d) 449 (Ont. C.A.). For examples of statutory limitation periods, see section 84 of the *Immigration Act, 1976*, and section 28 of the *Federal Court Act* (see, *infra*, notes 13 and 17 for the actual text of these provisions). Usually a distinction is drawn between the *decision* and the *reasons*. See the cases cited in note 7, *infra*, and such statutory provisions as subsection 79(3) of the *Immigration Act, 1976* (see, *infra*, note 12).

7. See *Minister of National Revenue* v. *Wrights' Canadian Ropes, Ltd.*, [1947] A.C. 109, p. 123 (P.C.); Kellock J.'s comments in the Supreme Court of Canada decision in this same case are also of interest: *Wrights' Canadian Ropes, Ltd.* v. *The Minister of National Revenue*, [1946] S.C.R. 139, p. 169. See also *Northwestern Utilities Ltd.* v. *City of Edmonton*, [1979] 1 S.C.R. 684, p. 705 and *De Iacovo* v. *Lacanale*, [1957] V.R. 553, pp. 557, 559 (Vict. S.C.). Professor de Smith also endorsed this view: see *de Smith's Judicial Review of Administrative Action*, 4th ed., by J. M. Evans (1980), p. 149. This holds true whether reasons are given only upon request, or whether they are given in all cases but not until some time after the decision has been rendered.

8. There are, however, some statutes where this is the case: see, for example, *Citizenship Act*, *supra*, note 4, s. 13; *Patent Act*, *supra*, note 4, ss. 42, 43, 44. See the discussion at note 6, *supra*.

9. For example, sixty days to six months. Hence no problem of this nature has been raised, to our knowledge, as regards section 18 of the *Federal Court Act* as no time limitation is imposed by that section. It is governed by the common law, which has been rather generous in this respect. See, *supra*, note 6.

10. There are a number of statutes where the problem could arise in theory but does not in practice because the appeal provision has never, or rarely, been used. See, for example, *Defence Production Act*, *supra*, note 4, s. 20; *Government Railways Act*, *supra*, note 4, s. 16.

11. Subsection 65(3) states that the Board *may* give reasons and *shall* if requested on an appeal pursuant to sections 72 or 73; these provisions deal with appeals from removal orders. Subsection 71(4) provides that the Board *may* give reasons and *shall* on request with respect to a "refugee status redetermination" made under section 70. Such a decision is made after the individual claiming refugee status has been denied such status by the Minister. Application may then be made to the Board to reconsider or "redetermine" the claim.

12. The wording of subsection 79(3) of the *Immigration Act, 1976* leaves doubt as to whether the Board is under an obligation to give reasons *with* the decision in the case of sponsorship appeals. In practice, it is only in difficult cases that a decision will be held pending preparation of the reasons. The text of subsection 79(3) is as follows:

> (3) The Board may dispose of an appeal made pursuant to subsection (2) by allowing it or by dismissing it, and shall notify the Minister and the person who made the appeal of its decision and the reasons therefor.

13. The text of section 84 is as follows:

> An appeal lies to the Federal Court of Appeal on any question of law, including a question of jurisdiction, from a decision of the Board on an appeal under this Act if leave to appeal is granted by that Court based on an application for leave to appeal filed with that Court within fifteen days after the decision appealed from is pronounced or within such extended time as a judge of that Court may, for special reasons, allow.

14. There are numerous cases dealing with this point. See, for example, *Vlahou* v. *Minister of Manpower and Immigration* (M.M.I.), [1977] 2 F.C. 225; *Kalaam* v. *M.M.I.*, [1976] 1 F.C. 112; *Kukan* v. *M.M.I.*, [1974] 1 F.C. 12; *Grewal* v. *M.M.I.* (1974), 2 N.R. 490 and *Mellul* v. *M.M.I.*, unreported, No. 77-A-92 (1977). In contrast, in one case (admittedly predating the ones just quoted) where the Minister applied for an extension of time on grounds other than the unavailability of reasons, the Minister asked for, and the court granted, an extension running from "the receipt by petitioner of the reasons for the decision . . . ": see *M.M.I.* v. *Coulanges-Cloutier*, [1972] 2 F.C. 1150, p. 1152. Furthermore, the Supreme Court of Canada has held that no appeal lies to that court from a refusal of the Federal Court of Appeal to grant leave to come before it: see *Ernewein* v. *M.M.I.*, [1980] 1 S.C.R. 639.

15. The Federal Court appears to take the view that since the Immigration Appeal Board decision to be challenged is itself a decision on appeal from an initial determination, the applicant is able to formulate his grounds of appeal to the court without the benefit of the Board's reasons, by re-submitting the grounds of appeal which were put before the Board: see *Kalaam*, *supra*, note 14, p. 114. A person seeking to challenge an appellate decision may be in a better position than one seeking to appeal an initial decision. However, we do not think that such an answer is satisfactory. The decision that is being challenged is the Board's decision, which is unsupported by reasons. It is the *reasons*, not the *results*, which will ultimately determine the success or failure of the appeal.

It is interesting to note, in this respect, that Chief Justice Jackett, as he then was, two years before delivering his judgment in *Kalaam*, said that a motion for extension of time, in which the file revealed no specific grounds for the delay, should be dismissed "unless there is some reasonably arguable question of law on which to appeal *that is revealed by a study of the reasons given for the Board's decision . . .* in which event the question of 'special reason' in relation to the whole of the delay would have to be reviewed in relation to that question of law" (our emphasis): see *M.M.I.* v. *Zevlikaris*, [1973] 1 F.C. 92, p. 95.

16. The paperwork involved is not insubstantial. In accordance with *Rule 1301* of the *Federal Court Rules* (C.R.C., c. 663) the actual application for leave to appeal must be supported by an affidavit establishing the facts relied upon by the applicant. Both of these documents must then be filed with the court. In addition, notice of the application must also be served personally on the Deputy Attorney General of Canada and all "interested persons" which would include any person who appeared as a party to the original proceeding.

17. The text of subsection 28(2) is as follows:

> (2) Any such application may be made by the Attorney General of Canada or any party directly affected by the decision or order by filing a notice of the application in the Court within ten days of the time the decision or order was first communicated to the office of the Deputy Attorney General of Canada or to that party by the board, commission or other tribunal, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiry of those ten days, fix or allow.

18. See *Montreal Flying Club Inc.* v. *Syndicat des Employés de l'Aéro Club de Montréal* (1975), 7 N.R. 177 (Fed. C.A.). We have been advised that this is an isolated instance and that the practice of the Board is to give reasons *with* its decisions. It is interesting to note that in the 1980-81 Annual Report of the Canada Labour Relations Board, reference is made to the fact that the problem discussed in this Report would arise if the Board did not give its reasons with the decisions. See *CLRB Annual Report*, 1980-81, pp. 16-17.

19. The relevant provisions of the Act are sections 70 and 71. See, *supra*, note 11, for an explanation of this term.

20. This is because the section 84 appeal provision permits an appeal to the Federal Court only from a decision of the Board *on an appeal* and the court has held that a refugee status redetermination is not a decision on an appeal. See *Astudillo* v. *M.M.I.*, unreported, No. 78-A-362 (1979), *Re Opoku-Gyamfi*, unreported, No. 80-A-67 (1980) and the text of section 84 in note 13, *supra*.

21. Subsection 71(4) of the *Immigration Act, 1976*.

22. See *Abdul Baig* v. *M.M.I.*, unreported, No. 81-A-18 (1981). Although the application for an extension of time was dismissed without reasons, consultation with counsel in this case revealed that the Board's reasons for decision were not available within the ten-day period and that this was the explanation for the applicant's delay. Also see *Lignos* v. *M.M.I.*, [1973] 2 F.C. 1073. These are the only cases we have found which deal with an extension of time in connection with the Immigration Appeal Board. However, the Court of Appeal has on other occasions shown great reluctance to grant extensions of time for filing section 28 applications and has stated that such an extension will only be granted if the applicant can show that there are valid grounds for attacking the decision in question. See *Consumers' Association of Canada* v. *The Hydro-Electric Power Commission of Ontario [No. 2]*, [1974] 1 F.C. 460; *Benoit* v. *The Public Service Commission of Canada*, [1973] 2 F.C. 962 and *Sierra* v. *M.M.I.*, unreported, No. 82-A-22 (1982). (This latter case involved an adjudicator's decision.)

23. Although not as extensive as for an application for leave under section 84, the paperwork involved is again not inconsiderable. The originating notice itself must be prepared, filed with the court, and served on the Deputy Attorney General of Canada, the tribunal, and personally on all interested persons. See *Rule 1401* of the *Federal Court Rules*.

24. See, *supra*, note 1, pp. 137-38.

25. See, *supra*, notes 11 and 12. See also *The Refugee Status Determination Process*, A Report of the Task Force on Immigration Practices and Procedures, Supply and Services Canada, November 1981, pp. 74-75, where it is recommended that the Board give reasons with every decision that an applicant is *not* a refugee.

26. See *Report of the Chairman, Immigration Appeal Board*, 1981, p. 4.

27. The situation is different with respect to statutory appeals where the amendment must be made to each specific existing statute and where, for obvious reasons, future problems cannot be prevented for those statutes which do not yet exist.

28. See, *supra*, note 18 and accompanying text.