

Unlocking Mandamus: Seeking Judicial Intervention When An Application Is Unreasonably Delayed



What is a mandamus application?

Courts can use different legal mechanisms to ensure that government bodies act according to their mandates. For example, courts may order prerogative remedies (also known as “writs”) against tribunals within their respective jurisdictions. One of these remedies is entitled “mandamus” (from the Latin “we order”), which is used to compel the performance of a legal duty.

For example, where a public body has a legal obligation to render a decision and has delayed in doing so, a court can grant a writ of mandamus to force that body to issue a decision within a specified timeframe. A writ of mandamus is a court order issued by a higher court to a lower court, government officer or public authority to execute a duty that they are obligated by law to complete.

How is mandamus used in the Canadian immigration process?

An applicant can file a mandamus application in Federal Court to leverage pressure on Immigration, Refugees, and Citizenship Canada (IRCC) to issue a decision on a long-standing Application where the delay has been “unreasonable.”

Usually, a delay is considered unreasonable if it takes longer than the average IRCC-listed processing time, however, this will depend on the specific facts of an applicant’s case ([Conille v Canada \(MCI\) 1998 CanLII 9097 \(FC\)](#)).

A writ of mandamus can be used effectively on an extensive range of application types, including permanent residence, temporary residence, citizenship and criminal rehabilitation. It can be obtained by filing an Application for Leave and Judicial Review at the Federal Court (see additional resources [here](#)).

Before initiating a mandamus application in Federal Court, an applicant should send a series of follow-up inquiries to the processing office, escalating where appropriate. If there is still no decision after the follow-ups have been made, the applicant should send a final demand letter to the processing office, asking that they issue a decision on the Application immediately.

If the processing office still does not issue a decision after the demand letter is

sent, the applicant can then file a Notice of Application for Leave and Judicial Review to kick-start the mandamus process.

What are the actual steps involved in a mandamus proceeding?

A mandamus proceeding is a complicated legal process involving many intricate steps. The key steps are summarized as follows.

- **Step #1: File the Notice of Application (NOA) with the Federal Court**

The NOA is a standard-form document that sets out the relief that the applicant is requesting (e.g., an order that the application be finalized, and a decision made within 30 days). The NOA should set out a history of the application that is in process, referencing the specific follow-ups that have been made.

- **Step #2: Prepare and File the Application Record**

The application records consist of the applicant's affidavit, the legal arguments in support of the mandamus application, and any other materials that the applicant seeks to rely on. The Department of Justice (DOJ) counsel (i.e., the lawyer representing IRCC) may choose to settle the case after the application record is filed, or they may choose to contest the litigation if they feel the processing delay is justified.

- **Step #3: Prepare and File the Reply Memorandum**

If the DOJ does not settle the case, it will have 30 days from when the application record is filed to file the respondent's record. The Applicant will then have 10 days from the time that the respondent's record is filed to file a reply memorandum. The reply memorandum consists of arguments that arise out of the DOJ's memorandum that the applicant wishes to address. The applicant cannot raise any new arguments in the reply memorandum.

- **Step #4: The Federal Court Judges Make a "Leave" Disposition:**

Once the Reply Memorandum is filed, the Application is "perfected" and no more written materials may be submitted. The judge will then consider all the materials and decide whether to grant "leave" to the mandamus application. It can take about 6 months or so for the leave disposition. If the judge feels there is "an arguable case" for mandamus, leave will be granted, and an oral hearing will be scheduled. The DOJ may choose to settle the litigation after leave is granted. If leave is rejected, the mandamus application process ends. The Applicant cannot appeal a negative leave decision.

- **Step #5: Oral Hearing at the Federal Court:**

Once leave is granted, a hearing will be scheduled, usually a few months after the leave order is issued. At the hearing, the applicant's counsel and the DOJ's counsel will present their arguments before the Federal Court judge. After considering the arguments from both sides, the judge may grant their decision at the hearing from the bench, or more commonly, they will take the matter under advisement, and issue the decision in writing a few weeks later.

- **What are the legal criteria for obtaining a mandamus order?**

The legal test developed by the Federal Court concerning mandamus applications comes from the case of [Vaziriv Canada \(MCI\) 2006 FC 1159 \(CanLII\)](#) (at para. 38), and it considers the following factors:

- IRCC must have a legal duty to decide the application;
- The duty must be owed to the applicant;
- The applicant must have submitted previous requests to IRCC, and provided them with a reasonable timeframe to respond;
- IRCC's delay must be "unreasonable," and they did not provide an adequate justification for the delay (e.g., if the applicant is primarily responsible for the delay, the mandamus application will fail);
- No other adequate remedy is available to the applicant (i.e., the applicant must

have exhausted every other administratively available remedy to expedite the processing of the application);

- The order sought will be of some practical value or effect;
- There is no equitable bar to the relief sought; and
- On a “balance of convenience” an order of mandamus should be issued.

Analysis

As it constitutes an extraordinary remedy, obtaining a mandamus order is challenging. It will only be granted where the processing delay is very lengthy, has caused serious prejudice to the applicant, and where there is no other adequate available remedy.

However, the reality is that sometimes unreasonably long delays can leave one with no choice but to ask the Federal Court to intervene to speed up the process. Therefore, one can file a writ of mandamus at the Federal Court and ask the judge to compel IRCC to act on the file.

Rather than having the application on hold for an undefined amount of time, including the stress and concerns that the situation may cause, mandamus can be an effective tool to bring about closure to a case.

Need to know more?

Initiating a mandamus application can be a very complex and time-consuming process. Fragomen professionals have extensive experience in all aspects of mandamus applications and can assist with the process should the need arise.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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