

# Fact Sheet

## IMMIGRATION INVESTIGATIONS AND ADMISSIBILITY HEARINGS

### Snapshot

To enforce the *Immigration and Refugee Protection Act*, Canada Border Services Agency (CBSA) investigates possible breaches of the Act. If there is sufficient evidence of a breach of the Act, officers may deal with the people involved or direct them to appear at an admissibility hearing. An admissibility hearing is like a court hearing. It is held before a member of the Immigration Division of the Immigration and Refugee Board (IRB). In some cases, removal orders may be appealed to the Immigration Appeal Division (IAD) of the IRB. The Federal Court of Canada Trial Division may review the IAD's ruling.

### Who is responsible

Local and regional CBSA staff, including immigration enforcement officers, hearings officers and delegates of the Minister (usually local CBSA managers, supervisors or officers), are involved in the investigation and admissibility hearing process. Members of the Immigration Division conduct admissibility hearings. The IRB is independent of CBSA and its members are trained in immigration law. In some cases, removal orders may be appealed to the IAD of the IRB.

### Immigration investigations

CBSA employs enforcement officers across Canada to investigate people who may have breached the Act. They work closely with the RCMP, local police and other agencies and, when necessary, can arrest, detain and remove people who breached the Act.

Investigations can begin with police reports, tips from the public, or the person's own admission. If there is sufficient evidence that a breach has been committed, the officer may submit a report to the Minister's delegate. The person under investigation may then face an administrative process for less complicated breaches, or an admissibility hearing presided over by a member of the Immigration Division, if the breach is more complicated.

For less complicated breaches (for example, when a visitor has remained in Canada longer than authorized), the Minister's delegate decides whether or not a breach has occurred and, if necessary, issues a removal order requiring the person to leave the country.

### Admissibility hearings

When a more complicated breach is alleged, the Minister's delegate reviews the investigation report and refers the matter to the Immigration Division for an admissibility hearing.



Admissibility hearings are similar to court hearings and are generally open to the public. However, they are held in camera if they concern refugee protection claimants or if the Division determines that there is:

- a danger to a person's life (for example, a person may be testifying in a case involving organized crime);
- a serious possibility that the fairness of the admissibility hearing would be jeopardized (for example, a woman may be reluctant to testify against her husband if the admissibility hearing is held in public); or
- a risk that information involving public security might be disclosed (for example, the admissibility hearing concerns a person who is inadmissible on security grounds).

Like a judge, a member of the Immigration Division presides over the admissibility hearing and listens to evidence presented by an officer representing the Minister, the person in question and his or her representative if there is one. Unlike a court hearing, however, there is no jury and there are fewer restrictions on evidence. At the end of the admissibility hearing, the member decides if the person is admissible. If the person is admissible, he or she is allowed to enter or remain in Canada. The member may set conditions.

If the person is inadmissible to Canada, a removal order is issued that requires the person to leave the country. The member can also decide if the person should be placed under detention or if conditions should be imposed upon release.

### **Appeals of removal orders**

Some foreign nationals with permanent resident visas, some permanent residents and some protected persons who have had removal orders issued against them at an examination or admissibility hearing can appeal to the IRB's Immigration Appeal Division. Those who cannot appeal removal orders are foreign nationals, permanent residents and protected persons who are found inadmissible because they:

- are security threats;
- have violated human or international rights;
- received a sentence of at least two years for criminal activity;
- are or have been involved in organized crime; or
- have made a misrepresentation, except in cases where the person is the sponsor's spouse, common-law partner or child.

An appeal can be launched by the person who was ordered removed or by CBSA on behalf of the Minister of Public Safety and Emergency Preparedness. The IAD can stay removal orders.

### **What changed with the introduction of the *Immigration and Refugee Protection Act* on June 28, 2002**

**In-camera admissibility hearings involving refugee claimants** Admissibility hearings for refugee protection claimants are held in-camera under the new Act. This recognizes the need to protect the confidentiality of the claimant.