

Fact Sheet

APPEALS OF REMOVAL ORDERS

Snapshot

As part of the enforcement of the *Immigration and Refugee Protection Act*, Canada Border Services Agency (CBSA) can refuse to admit people into Canada or may, in some cases, order them removed from the country. In some cases, the Immigration Division of the Immigration and Refugee Board (IRB) can order people removed as a result of an admissibility hearing. However, certain people can appeal these decisions.

Who is responsible

Local and regional CBSA staff, including hearings officers, are involved in the appeals process. Hearings officers represent the Minister at appeal hearings before the Immigration Appeal Division (IAD) of the IRB. The IRB is independent of CBSA and its members are trained in immigration law. The IAD hears appeals of removal orders. The Federal Court of Canada Trial Division may review the IAD's ruling.

Who can appeal to the Immigration Appeal Division

The Act allows certain people to appeal removal orders made by officers or by a member of the Immigration Division at an admissibility hearing. In general, people who can appeal a removal order are one of the following:

Permanent residents – people who were granted permission to enter and remain in Canada.

Permanent resident visa holders – foreign nationals who hold permanent resident visas and are denied entry at a port of entry upon first arriving in Canada.

Protected persons – persons who were found to be in need of Canada's protection.

Normally, people will not be removed from Canada until their appeal has been decided. However, if for some reason they have already been removed from Canada, they may be permitted to return to attend their appeal hearing.

Loss of right of appeal

In certain situations, foreign nationals and permanent residents do not have a right to appeal. These people lose their appeal rights if a member of the Immigration Division determines that they are security threats or war criminals, or that they have committed crimes against humanity, were involved in organized crime or are serious criminals. A serious criminal is defined as a person who has been convicted of a crime in Canada that would be punishable by 10 years in prison and for which a sentence of at least two years is given.



Reasons for an appeal

People can appeal a removal order if they believe that the officer or the Immigration Division made a legal error, or if they believe that they should not be removed from Canada on humanitarian or compassionate grounds.

The Minister of Public Safety and Emergency Preparedness may appeal an Immigration Division's decision only on the basis of a legal error.

Who hears the appeal

Members of the IAD hear appeals. Hearings officers represent the Minister at appeal hearings. The hearings are held in public and operate much like a regular court. However, rules of evidence are more flexible and the IAD can consider any evidence it believes credible and trustworthy. When making a decision, its members consider questions of law and fact and, in some situations, humanitarian and compassionate concerns.

Results of an appeal

The IAD can take one of three actions following an appeal hearing.

Dismiss the appeal: The appeal is rejected and the removal order is confirmed.

Allow the appeal: The appeal is successful and the removal order is cancelled.

Stay the appeal: The IAD can "stay" (postpone) the removal order for a certain period of time.

The IAD will impose the following conditions. The person must:

- inform CBSA and the IAD in writing of any change of address;
- provide a copy of the passport or travel document (if they do not have a proper travel document or it has become invalid, they will have to apply for or extend their travel document or passport);
- not commit any criminal offences;
- report immediately in writing to CBSA if charged with or convicted of a criminal offence; and
- act in accordance with all other conditions imposed by an Immigration Division member.

If, at the end of that period, the person has obeyed these conditions, the IAD may cancel the removal order. If the conditions have not been met, CBSA can apply to have the stay lifted and then carry out the removal.

Review by the Federal Court

Both the person in question and the Minister of Citizenship and Immigration can apply to the Federal Court of Canada for a review of an IAD decision. However, they must first obtain the leave (permission) of the Court to make the request. If the Federal Court grants permission, it will then review the request and either dismiss it or set aside the IAD's original decision and order a new appeal hearing.

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

Fewer appeals The new Act eliminates appeals of removal orders issued for security threats, war criminals, people who have committed crimes against humanity, people involved in organized crime and serious criminals. This allows for faster removal.

Clear conditions The proposed regulations clearly indicate the conditions that the IAD member must impose when staying a removal. In addition, stays are automatically cancelled if a person commits another offence.