



Procedures for Streaming IAD Cases

Streaming Criteria and Analysis

Case Management, December 2006

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Introduction: Enhanced Case Management

The IAD Innovation Plan calls for an enhanced case management system, to promote early information gathering, early resolution and to ensure that scheduled appeals are hearing-ready.

Part of the case management process involves streaming the appeals into appropriate resolution streams.

Streaming consists of matching each appeal to a case management process which is best suited to resolving the appeal while respecting procedural fairness. The goal of streaming is to make the most efficient use of resources to support the resolution process, and in so doing create the capacity to reduce the inventory of appeals and associated processing times, enhance the quality of resolutions and seek greater efficiencies in case management and scheduling.

The objective of these procedures is to provide a flexible framework that governs the process of identifying the apparent degree of complexity of each appeal and assigning it to a case management stream so that it can be dealt with quickly and fairly.

The following are some of the principles which guide the streaming of cases:

- *Streaming is the basic tool of case management*
Streaming supports quality resolution and adjudication by identifying the characteristics of each appeal and then matching resources with each appeal in a way that corresponds to the complexity of the case. This approach enables simpler cases to be dealt with earlier, possibly without a hearing or with less hearing time.
- *Streaming is a permanent feature of case management*
While it is a necessary feature of any attempt to clear a backlog of cases, streaming is a practice not limited to clearing a backlog. It is the means to manage cases efficiently, whether or not there is a backlog.

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- *Streaming is universal in its application*
To effectively manage its entire caseload, the IAD will stream all cases. Streaming is not limited to a particular group or type of cases.
- *Streaming decisions are informed by the experience of adjudication*
Case management choices are informed by the actual experience of the IAD in informally resolving and adjudicating appeals. Accordingly, the directions set by the Deputy Chairperson of the IAD as part of the Division's adjudication strategy determine which types of appeals are placed in the various case management streams.
- *Streaming is a case management tool, not an adjudicative tool*
The assignment of an appeal to a particular stream is simply a case management tool. It does not influence the adjudication of the merits of the appeal. In the case of resolution of an appeal without a hearing, it is ultimately the responsibility of the parties to show that an appeal cannot be resolved without a hearing. In the case of the adjudication of an appeal, it is ultimately the responsibility of the member to decide whether to allow, dismiss or stay an appeal based solely on the merits of the individual appeal.

In all of its streaming activities, the IAD is committed to the following key principles:

- Efficiency, through the accuracy and simplicity of process;
- Consistency, by adopting a consistent approach to key elements of the process;
- Integrity, through the transparency of process which results in fair resolutions and the issuance of sound and well-reasoned decisions in cases which are adjudicated; and
- Fairness, through adopting a process that adheres to the principles of natural justice.

Resolution Streams

Note: In cases involving multiple grounds for the issuance of a removal order or for the refusal of a sponsored application for permanent residence, the triage officer should select the resolution stream that is most likely to lead to a quick and efficient resolution of the appeal. Also, it is always possible that a resolution stream different from the first will be selected during the process, depending on the information gathered.

1. **Paper hearings for appeals** (other than residency obligation appeals) where according to IAD Rule 25(1), it would not be unfair to any party to proceed in writing and there is no need for oral testimony to decide the case:
 - a) Jurisdictional issue which, if resolved against the appellant, would mean that there is clearly no right of appeal according to s. 63 or s. 64 IRPA.
 - b) Determinative factual issue with no credibility assessment required which, if resolved against the appellant, would mean that the IAD has no discretionary jurisdiction according to s. 65 IRPA.
 - c) Determinative legal issue.

Note: Where a paper hearing fails to resolve the case, a Member will choose another stream according to the complexity of the issues raised.

2. **Early resolution by informal methods** (e.g. phone calls, letters to the parties obtaining further documentation, obtaining agreed statements of facts). If no tangible results within 4 weeks, select another hearing stream.

Note: In cases where the appellant fails to respond to early information resolution written requests, the triage officer should send the file to abandonment (show cause). A two-step procedure is recommended with the exception of loss of contact with the appellant (returned mail rather than no response). If the failure is due to unreturned phone calls, the triage officer should consider a written request or send the case to Assignment Court, which could ultimately lead to abandonment if the default to proceed persists.

3. **ADR** – Screened for likely successful resolution.
4. **Short hearing** (6 – 8 per day; single issue).
5. **Medium hearing** (3 per day).
6. **Full hearing** (2 per day).
7. **Complex hearing** (more than half a day). These cases are exceptional.

Note: The triage unit may consult with the member Manager on streaming decisions, as required.

Streaming Criteria and Analysis by Case Type

I) Removal Order Appeals:

A) Serious Criminality (as qualified by s. 64(2) IRPA)

Serious criminality: With respect to a crime that was **punished in Canada** by a term of imprisonment of **at least two years**. This includes time spent in pre-sentence custody, which is usually credited on the basis of a 2 for 1 ratio. However, credit for other than a 1 for 1 basis must be clear based on documentation. (*Need for triage officer to read sentencing judgement/warrant of committal in some cases*): Paper hearing (jurisdictional issue: no right of appeal).

B) Criminality (s. 36 IRPA)

CBSA early review – Early informal resolution:

- Ask CBSA whether file screened in for early review and whether there is a possibility of receiving an agreed statement of facts or a joint recommendation for a stay. If early resolution fails, stream to Full hearing.

Note: If information indicates that an appellant has had a subsequent conviction since the issuance of the deportation order which would fall within s.64 (2) IRPA, the triage officer should contact CBSA to determine if a removal order has been made in respect of this new conviction. If not, the appeal should be scheduled for Medium hearing immediately.

C) Security, human or international rights violations, organized criminality (s. 64(1) IRPA)

- Paper hearing (jurisdictional issue: no right of appeal).

D) Misrepresentations

- Medium to Full hearing depending on the complexity.

E) Entrepreneurs

Early informal resolution to collect H & C information and assess whether breach has been remedied and there is proof of the remedy so as to ascertain if Minister may be in a position to provide a positive recommendation on H & C or whether the case is suitable for streaming to ADR.

- If not resolved: Medium to Full hearing.

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Note: Need discussions with CBSA to confirm that early informal resolution attempts may result in joint recommendation in writing to allow the appeal.

F) Residency obligation

Early informal resolution if appellant has been in Canada close to 730 days within requisite period. Collect H & C information and in particular assess whether appellant has close family (spouse and children) in Canada, ties to "home" country have been severed and serious efforts have been made to establish and remain in Canada:

1. ADR or Medium hearing if only one appellant is involved (i.e. if no other related removals involving other family members are also appealed and which could potentially be joined because of similar facts, similar time spent in Canada, etc.), no challenge to legal validity is proposed, (unless all legal challenges can be dealt with in writing, in advance of the hearing) and it involves a departure order of an individual without a lengthy and complex history of dealings with immigration.
2. If additional grounds for the removal order: Full hearing.

G) Minister's appeal

- Full hearing.

II) Sponsorship Appeals:

A) Serious Criminality (as qualified by s. 64(2) IRPA)

Serious criminality: With respect to a crime that was **punished in Canada** by a term of imprisonment of **at least two years**. This includes time spent in pre-sentence custody, which is usually credited on the basis of a 2 for 1 ratio. However, credit for other than a 1 for 1 basis must be clear based on documentation. (*Need for triage officer to read sentencing judgement/warrant of committal in some cases*). Paper hearing (jurisdictional issue: no right of appeal).

B) Criminality (s. 36 IRPA)

- If offence relatively minor including sentence, Early informal resolution opportunity to collect H & C information and to inquire if applicant has received pardon or if there is evidence of rehabilitation. If early resolution fails – Medium to Full hearing depending on the complexity.
- Others: Full hearing.

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C) Security, human or international rights violations, organized criminality (s. 64(1) IRPA)

- Paper hearing (jurisdictional issue: no right of appeal).

D) Spouse/common-law partner/conjugal partner

1. Marriage under age 16 and under 16 at the time of filing of application for permanent residence: Paper hearing (determinative factual issue with no credibility assessment).
2. Prior sponsorship undertaking in respect of a spouse, common-law partner or conjugal partner and the period in respect of that undertaking (3 years) has not ended: Paper hearing (determinative factual issue with no credibility assessment).
3. In the case where the foreign national is the sponsor's spouse, the sponsor or the foreign national was, at the time of their marriage, the spouse of another person: Paper hearing (determinative factual issue with no credibility assessment). Medium hearing if indication given that expert witness will be called to testify on the interpretation of foreign law concerning the validity of a divorce or the validity of a previous marriage. If CBSA intends to challenge the credentials of the expert witness, the case should be streamed to a Full hearing.
4. *Res Judicata*: Paper hearing to determine whether *res judicata* applicable:
 - May require oral evidence to determine the issue (Short hearing). Full hearing if it is determined that *res judicata* (or abuse of process) does not apply.
5. Conjugal partners who do not meet the definition of conjugal partner because they had not known each other for at least 12 months at the time of the filing of the application for permanent residence: Paper hearing (determinative factual issue with no credibility assessment).
6. Conjugal partners who do not meet the definition of conjugal partner because they are not in a conjugal relationship or it is a bad faith relationship.
 - a) Early informal resolution to obtain information. ADR if evidence points to an ongoing conjugal relationship (lengthy period of time together – more than 12 months prior to the time of the filing of the application for permanent residence and factors indicate a marriage-like relationship, a child or pregnancy).
 - b) Medium to Full hearing depending on the complexity.
 - Prior alleged immigration fraud.

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- Significant credibility concerns at interview such that it is likely that CBSA will want to examine at hearing.
 - Significant compatibility issue (e.g. combination of a number of compatibility factors).
7. Legality of marriage refusal and Bad Faith Relationship (spouse)
 - a) Paper hearing (legality of marriage: determinative issue capable of proof on paper – no need to examine bad faith relationship if legality issue results in paper dismissal). See 8.a) below.
 - b) If legality established – See 9 below.
 - c) If not suitable for paper hearing or if paper hearing leaves legality issue unresolved, Full hearing to examine Legality and Bad Faith Relationship.
 8. Legality of marriage refusal (Genuineness not disputed):
 - a) Paper hearing (determinative issue capable of proof on paper) e.g. statute prohibits marriage between people of this relationship and oral evidence not required or foreign divorce not recognized under Canadian law.
 - b) Early informal resolution – To obtain information on foreign law, narrow issues and where appropriate explore the possibility of a conversion to conjugal partner category, which would dispose of the appeal.
 - c) Medium hearing if indication given that expert witness will be called as a witness on the interpretation of foreign law or existence of a custom. If CBSA intends to challenge the credentials of the expert witness, the case should be streamed to a Full hearing.
 9. Bad Faith Relationship, spouse (Legality not disputed):
 - a) Early informal resolution to obtain information. ADR if evidence points to an ongoing spousal relationship (lengthy period of time together, family involvement in the wedding and continued family interconnections, a child or pregnancy).
 - b) Medium to Full hearing depending on the complexity.
 - Prior alleged immigration fraud.
 - Significant credibility concerns at interview such that it is likely that CBSA will want to examine at hearing.
 - Significant compatibility issue (e.g. combination of a number of compatibility factors).

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E) Adoption

1. Legality of adoption and Bad Faith Relationship:
 - a) Paper hearing (legality of adoption: determinative issue capable of proof on paper – no need to examine bad faith relationship if legality issue results in paper dismissal). See 2.a) below.
 - b) If legality established, Full hearing – See 3. below.
 - c) If not suitable for paper hearing or if paper hearing leaves legality issue unresolved, Full hearing to examine Legality and Bad Faith Relationship.
2. Legality of adoption (Genuineness not disputed):
 - a) Paper hearing (determinative issue capable of proof on paper).
 - b) Medium hearing if indication given that expert witness will be called as a witness on the interpretation of foreign law or existence of a custom. If CBSA intends to challenge the credentials of the expert witness, the case should be streamed to a Full hearing.
3. Bad Faith Relationship (Legality not disputed):

Full hearing. Adoptions are almost always highly contentious where genuine parent-child relationship is questioned.

F) Dependent child of sponsor /Dependent child of applicant

1. Dependent child of sponsor:
 - a) Paper hearing (determinative factual issue with no credibility assessment (e.g. overage and working; married or has common-law partner).
 - b) If not suitable for paper, or if paper hearing leaves issue unresolved: Medium to Full hearing, depending on the complexity of the case.
 - c) Proof of relationship at issue: Early resolution – See **G)** below.
2. Dependent child of applicant:

Note: These cases involve the sponsorship of father/mother (applicants) and dependent children (siblings of the sponsor).

- a) Appeal when there is no refusal but a deletion of a child and the other applicants were issued visas: Paper hearing, no jurisdiction (no refusal of a member of the family class in relation to the sponsor).

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- b) Refusal of entire application for misrepresentation: Paper hearing (jurisdictional issue: no right of appeal). See **L**) below.
- c) Refusal of entire application on ground that child does not qualify as dependent child and possibly additional grounds: Medium to Full hearing depending on the complexity of the case.

G) Not a member of the family class

1. Section 117(9)(d) IRPR: Paper hearing (determinative factual issue with no credibility assessment).
2. Nieces, nephews, siblings, step-parents (where a biological parent not sponsored). Review for exceptions: Paper hearing.
3. Proof of relationship:
 - Early informal resolution opportunity to obtain proof of relationship of any kind, including DNA results.
 - If appellant chooses to provide DNA results: Paper hearing.
 - If no DNA or other conclusive evidence received: Short hearing.

H) Not a sponsor

1. Not a permanent resident/Canadian citizen: Paper hearing (determinative factual issue with no credibility assessment).
2. Not 18 or older: Paper hearing (determinative factual issue with no credibility assessment).
3. Application not in accordance with Regulations: Paper hearing (determinative factual issue with no credibility assessment).
4. Not residing in Canada and sponsor not Canadian citizen: Medium hearing – The issue of where residing often requires oral evidence.
5. Not residing in Canada and sponsor is a Canadian citizen, but not sponsoring spouse/common-law/conjugal/dependent child: Medium hearing — In these cases the issue of where residing usually requires oral evidence.
6. Not residing in Canada and sponsor is a Canadian citizen sponsoring spouse/ common-law/ conjugal/ dependent child: Informal early resolution. If early informal resolution fails, stream to Medium hearing.

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I) Financial refusal (sponsor or applicant related)

1. Does not meet MNI or Quebec financial criteria:
 - Early informal resolution: Letter requesting current financial information and other H & C information.
 - If early informal resolution fails: Short hearing.
2. Sponsor on social assistance:
 - Early informal resolution: Letter requesting current financial information and other H & C information.
 - If early informal resolution fails: Short hearing.
3. Prior default on undertaking:
 - Early informal resolution: Letter requesting current financial information, details of any repayment of debt and other H & C information.
 - If early resolution fails: Short hearing.
4. Applicant related refusals for financial reasons
 - Early informal resolution: letter requesting current information on ability and willingness to support him/herself and arrangements for care and support as well as other H & C information
 - If early informal resolution fails: Short hearing

J) Health ground refusal

Early informal resolution: Determine if legal validity contested.

- If legal validity contested: Full hearing.
- If legal validity uncontested: obtain H & C information and assess possibility of ADR. If ADR not reasonably likely to resolve, stream to Full hearing.

K) Other cases of Non-compliance with IRPA

1. Failure to attend medical examination.
 - Early informal resolution: Inquire if appellant will withdraw and agree to attend interview on re-processing (assumes visa office will reopen file).
 - If no resolution: Short hearing.

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2. Failure to attend interview.
 - Early informal resolution: Inquire if appellant will withdraw and agree to attend interview on re-processing (assumes visa office will reopen file).
 - If no resolution: Short hearing.
3. Failure to answer questions at interview.
 - Short hearing.
4. Failure to provide documentation.
 - Early informal resolution: Inquire if appellant will withdraw and agree to provide documentation on re-processing (assumes visa office will reopen file).
 - If no resolution: Short hearing.
5. Prior deportation unrelated to criminality.
 - Early informal resolution: Where this is the only ground of refusal, inquire if appellant has applied for permission to return and collect H & C information so as to ascertain if Minister may be in a position to provide a positive recommendation on H & C.
 - If not resolved: Medium hearing.

Note: Need discussions with CBSA to confirm that early informal resolution attempts may result in joint recommendation to allow in paper hearing.

L) Misrepresentation

1. If applicant is not a spouse/ common-law partner or dependent child in relation to the sponsor: Paper hearing (jurisdictional issue: no right of appeal).
2. If applicant is a spouse/ common-law partner or dependent child in relation to the sponsor: Medium to Full hearing depending on the complexity.

M) Other

Note: The list below is not exhaustive.

1. In-land refusal: Paper hearing (jurisdictional issue: no right of appeal).
2. Notice of appeal unrelated to sponsorship/removal/ residency obligation: Paper hearing (jurisdictional issue: no right of appeal).
3. Unsuccessful application for an exemption under s. 25 IRPA

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(jurisdictional issue: no right of appeal).

4. Appeal related to expiry of unused permanent resident visa: Paper hearing (jurisdictional issue: no right of appeal).
5. Notice of appeal filed late: Paper hearing for late filing.
 - If no response: Dismiss for late filing.
 - If extension sought and refused by Member: Paper hearing dismissal.
 - If extension sought and granted by Member: Stream as *per* grounds of refusal.

III) Residency Obligation Appeals – s. 63(4) IRPA

Medium hearing.