



Detention Review Hearings

**Immigration and
Refugee Board of Canada**

Immigration Division



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www.irb-cisr.gc.ca

This brochure explains detention reviews held by the Immigration and Refugee Board of Canada. It is not a legal document. For precise, legal information, please consult the *Immigration and Refugee Protection Act*, the *Immigration and Refugee Protection Regulations*, and the *Immigration Division Rules*. You can find them on the IRB Web site at *www.irb-cisr.gc.ca*.

Who should read this pamphlet?

You should read this pamphlet if you, or someone you know, have been asked to appear before the Immigration Division of the Immigration and Refugee Board of Canada (IRB) for a detention review hearing.

What role does the IRB play in detention reviews?

The IRB hears your case and decides whether you should be released or remain in detention. The IRB is an independent administrative tribunal that makes legally binding decisions – like a court, only in a less formal manner. The IRB also decides other immigration and refugee matters. For more information about the IRB, visit the IRB Web site at www.irb-cisr.gc.ca.

What role does the Canada Border Services Agency (CBSA) play in detention reviews?

The CBSA's role is to manage, control and secure Canadian borders. It is responsible for detaining and removing people from Canada who do not have the right to enter or remain in this country. For more information about the CBSA, visit the CBSA Web site at www.cbsa-asfc.gc.ca.

The ***Immigration and Refugee Protection Act (IRPA)*** is an important part of Canada's immigration law. IRPA deals with immigration and refugee protection matters in Canada, including detention and detention reviews. You can read IRPA on the IRB Web site at www.irb-cisr.gc.ca.

You are detained for immigration reasons: what happens next?

If you are a permanent resident or a foreign national and you've been detained by the CBSA for immigration reasons, you have the right to an independent hearing to review the reasons for your detention. Once you are detained, the CBSA must notify the IRB. A member (decision-maker) of the Immigration Division of the IRB will then hold a detention review hearing *within two days* (or as soon as possible afterwards).

A **permanent resident** is a person whom the Government of Canada has allowed to live permanently in Canada, and who may later apply to become a Canadian citizen.

A **foreign national** is a person from another country who is not a Canadian citizen or a permanent resident.

Where will you be held?

You may be held in a provincial correctional facility. Or, if you are detained in Toronto, Montreal or Vancouver, you may be held in a minimum-security, immigration holding centre. The CBSA decides where you will be held.

In some cases, your detention review will happen at the facility where you are being held, or you may be connected to the IRB member by teleconference or videoconference. In other cases, CBSA officers may take you to a hearing room at an IRB office for your detention review.

Who attends a detention review?

- You, to present your story
- Your counsel, if you have one, to help you present your story
- An interpreter, provided by the IRB, if you need one to speak for you in English or French
- Minister's counsel, to present the CBSA's case

- Any witnesses, such as family members (depending on your case), if they are called to give information
- A guarantor (also called a bondsperson), if you will be using one to show that you will meet the conditions of your release
- A representative of your country's embassy or consulate, if you request it
- A representative of the United Nations High Commissioner for Refugees (UNHCR), in some cases, if you are also a refugee claimant
- An IRB member, to decide the matter

Detention reviews are usually **open to the public**. Media or other observers may attend or have access to information about your case. The detention review may be held in private if, for example, you are also a refugee claimant, or if a public hearing would threaten your safety.

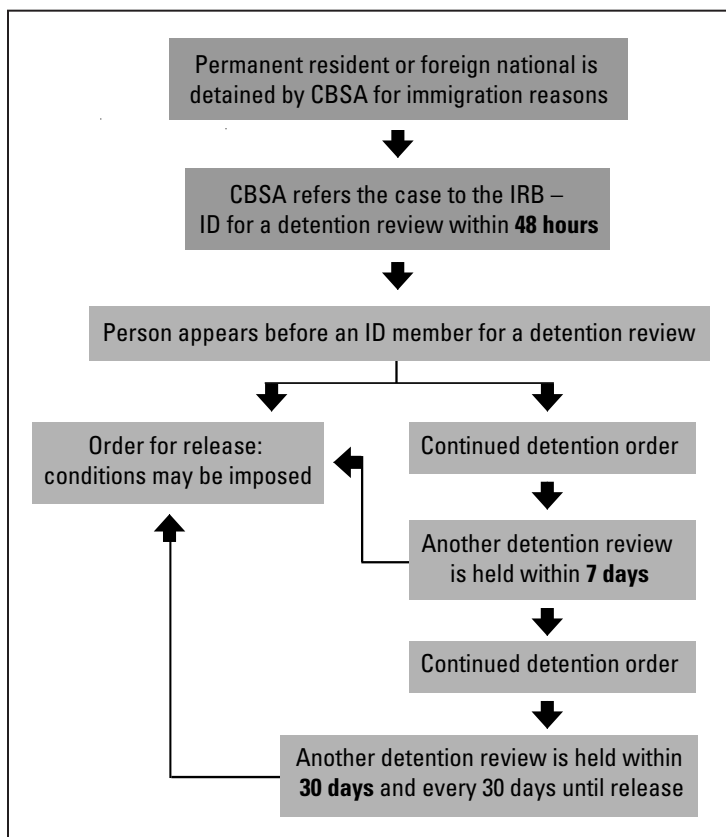


What happens at the detention review?

The IRB member is in charge of the detention review. The member will start by introducing everyone and explaining what is about to happen to make sure you understand. If you have an interpreter, the member will check that you understand each other.

Next:

- Minister's counsel will explain why the CBSA believes you should be detained.
- You or your counsel will have the opportunity to respond, to explain your story and to ask questions.
- The member may ask you questions throughout the hearing.
- If there are witnesses to present information, Minister's counsel, you, your counsel or the member may ask them questions.



After hearing from both sides, the member will decide whether you will be released or remain in detention. The member will usually state his or her decision and the reasons for this decision at the end of the hearing. The member may also set a date for another hearing to give you the decision and the reasons.

What goes into a decision?

In making a decision, the member considers the information provided at the detention review – including your story – and Canada’s immigration law. The CBSA has the burden of proof. This means that the CBSA must show why you should be detained and, if it does not, the member must order your release.

What if the member decides that you must remain in detention?

The member will order you to remain in detention if he or she decides that:

- You will not appear for an immigration examination, a hearing or any other immigration proceeding
- You will not leave the country, if you have been ordered to do so
- You are a danger to the public
- You are inadmissible to Canada and are under investigation by the CBSA for security reasons or for violating human or international rights, or
- You are a foreign national and the CBSA is still trying to establish your identity (or you are not cooperating with the CBSA to establish your identity)

If you are ordered to remain in detention, you will have another detention review within *seven days*. If, after this second review, the member again orders your detention, the reasons for your detention will be reviewed again in *30 days* and *every 30 days after that*, until you are released or removed from Canada.

You have the right to request an **early detention review** at any time if you have new information.

What if the member decides to release you?

If the member decides that there is no longer a reason under Canada's immigration law to keep you in detention (for example, because you were able to establish your identity to the satisfaction of the CBSA), the member will order your release. The member may also order you to meet certain conditions, such as checking in regularly at a CBSA office for a period of time, or paying a cash bond (see below).

What if the member orders you released under a bond?

Cash bond (or deposit)

If the member orders a cash bond, you or another person (such as a guarantor) must pay a deposit (an amount of money) to the CBSA. This is to make sure you meet all the conditions of your release. If you do not meet the conditions, the Government of Canada will keep the money.

Performance bond (or guarantee)

If the member orders a performance bond, your guarantor must sign a document that is a "promise to pay" an amount of money. This is a promise that you will meet all the conditions of your release. If you do not meet the conditions, the Government of Canada will collect the money from your guarantor.

A **guarantor** is a trustworthy person who can make sure that you meet the conditions of your release. With any bond, your guarantor must be a Canadian citizen or a permanent resident of Canada who can prove that he or she can afford to pay the bond and ensure that you obey the conditions of your release.

Can you ask for a review of the decision on your detention?

You may ask for leave (or permission) of the Federal Court of Canada for judicial review of the decision.

What if you are also claiming refugee protection?

If you are claiming refugee protection in Canada and you are detained, the Refugee Protection Division of the IRB will process your refugee claim. You must still meet the 28-day deadline to file your Personal Information Form (PIF) with the IRB, or the Refugee Protection Division of the IRB might not hear your claim. A CBSA officer will provide you with the PIF and other information. You can also visit the IRB Web site at www.irb-cisr.gc.ca.

What if you have also been ordered to appear at an immigration admissibility hearing?

In some cases, if the CBSA has reason to believe that you should not enter or remain in Canada – that is, that you are inadmissible to Canada – a member of the Immigration Division will also consider this question at a separate immigration admissibility hearing. This hearing may be held on the same day as your detention review (often right before), or it may be scheduled for another time. You will be told the date of your admissibility hearing ahead of time.

For more information, see the IRB booklet entitled *Immigration Admissibility Hearings*. Or, visit the IRB Web site at www.irb-cisr.gc.ca.

Who can help you?

Detention is a serious matter. You may wish to hire a lawyer or a professional immigration consultant to help you. If you are in Quebec, you may also hire a notary. You are responsible for paying the cost of counsel. If you cannot afford a lawyer or a notary, and if you qualify, you may be able to get free legal help, such as legal aid. You may also represent yourself if you wish. Some community or religious organizations that help immigrants and refugees may also be able to help you. Ask a CBSA officer for help in finding more information.

Counsel is someone who represents and advises a person appearing before the IRB. If you are paying your counsel, he or she must be a lawyer, a notary of the Province of Quebec or a registered immigration consultant. If you are not paying the person, you may ask a representative of a community organization, a trusted friend or a family member to represent you.