



What you should know about detention review hearings

If you have been detained by the Canada Border Services Agency (CBSA) for immigration reasons, you will have a detention review hearing before the Immigration Division of the Immigration and Refugee Board of Canada (IRB). The following information will help you understand the detention review process and what to expect.

What happens after you have been detained:

1. When the CBSA detains you, it must tell the Immigration Division of the IRB.
2. You have the right to a detention review hearing within 48 hours of your detention or as soon as possible afterward. The CBSA itself may release you before this hearing takes place. If the CBSA does not release you, the Immigration Division of the IRB will hold a detention review hearing.
3. You will receive a notice telling you when and where your detention review will be held.
4. You should also receive copies of any documents that the CBSA wants to use as evidence at your hearing.
5. Your hearing may take place by videoconference, on the telephone, or in person.
6. The person presiding over your hearing – referred to as a member – will decide whether you will be released or stay in detention.

You should know: All IRB hearings are scheduled as virtual hearings. However, you can also request an in-person hearing. If someone is representing you, they should make the request in writing. You may also make the request yourself—either in writing or orally.

What is the IRB's role in detention reviews?

A member of the Immigration Division of the IRB will hear your case and decide whether you will be released or stay in detention. The IRB is like a court, but less formal. It makes decisions that are legally binding.

You should know: The person who decides whether you will be released or stay in detention is the **Immigration Division member**, also called **the member**.

What is the CBSA's role in detention reviews?

A CBSA representative will take part in your detention review and explain why you were detained. The CBSA representative will present evidence. The representative may argue that you should remain in detention or may recommend your release.

You should know: The CBSA representative is also called the Minister's representative or Minister's counsel.

You can hire someone to represent you

Although you can represent yourself in your hearing, you may want to hire counsel to help you. Counsel can be a lawyer or a registered immigration consultant. If you are in Quebec, counsel can also be a notary. You are responsible for paying your counsel.

If you do not have enough money to pay for counsel, you may be able to get free legal help. Some provinces and territories offer free legal aid to persons who are eligible. Some community or religious organizations that help immigrants and refugees may also be able to help you. Ask an officer where you are being detained to help you contact legal aid or other counsel. If you decide to hire counsel or to have someone help you, you should do so as soon as possible.

A friend or family member may also act as your counsel if they are **not receiving payment** for their help.

Possible reasons why you have been detained

The CBSA representative can ask the Immigration Division member to keep you detained if the CBSA believes that at least one of the following situations applies to you:

You are likely to pose a danger to the public

To support its position, the CBSA may give examples from your life of:

- association with a criminal organization
- criminal convictions or pending charges for sexual offences, certain drug-related offences, or offences involving violence or weapons
- any behaviour, activities and events that support the claim that you should be considered dangerous

You can provide your own evidence and arguments to show the member why you are not a danger.



You will probably not appear for an immigration hearing or for your removal from Canada

To support its position, the CBSA may give examples of times when you:

- did not appear for immigration or court matters
- did not follow conditions
- entered a country illegally
- escaped from custody

You can provide your own evidence and arguments to show the member that you will appear when you are asked to do so.

Your identity has not been established but can be

You may have come to Canada without identity documents or with identity documents that might not be genuine. The CBSA may not be able to confirm your identity.

You must help the CBSA establish your identity. You can do this by trying to get your identity documents and by giving information that will help the CBSA establish your identity.

The Immigration Division member will consider the CBSA's efforts, and your cooperation with the CBSA in proving your identity, before deciding to continue your detention or to order your release.

You might be inadmissible to Canada for security reasons or because of a violation of human or international rights, serious criminality, criminality, or organized criminality

The CBSA will explain what steps they are taking to find out whether you are inadmissible for one of these reasons. In this situation, the Immigration Division member can only consider whether the CBSA has a reasonable suspicion and is taking the necessary steps to investigate it.

Important: Listen carefully to what the CBSA representative is saying. If you do not understand something, ask for an explanation.

Other factors that will be considered in a detention review

The member must consider the reasons for your detention and also:

- how long you have been in detention
- how long detention might continue if you are not released
- whether you or the CBSA have caused any unexplained delay
- any alternative to detention that is available
- the best interests of any directly affected child

You may present evidence and arguments about any of these factors for the member to consider.

What happens at a detention review hearing

1. The Immigration Division member is in charge of the hearing. The member will start by introducing everyone and explaining what is going to happen. If you do not understand French or English, an interpreter will be at the hearing to translate for you. If there is an interpreter at your hearing, the member will check that you understand each other.

Important: If you need an interpreter and none is present, tell the member right away.

2. The CBSA representative will explain why you are being detained (**the reasons for detention**) and present evidence and arguments that support their position. More than one reason for detention can be given.
3. You and your counsel will be given an opportunity to respond, to present your evidence and arguments, and to ask questions.
4. The CBSA representative may be allowed to respond to what you or your counsel have said.
5. If there are witnesses at the hearing to supply information, the CBSA representative, you, your counsel, or the member may ask them questions.
6. After hearing from the CBSA representative, you or your counsel, and any witnesses, the member will decide whether you will be released or stay in detention.

There may be an alternative to detention

An alternative to detention is a release plan that may include **conditions** you must obey. You can suggest an alternative to detention. When you prepare for your hearing, you should think about reasonable alternatives to detention. Conditions could include:

- providing the CBSA with your residential address
- reporting regularly to the CBSA
- obeying a curfew
- living with a specific person
- avoiding drinking alcohol or taking drugs
- any other condition that is needed in your case

The member will decide if conditions are necessary and what they should be.



The alternative to detention may also include a bond

There are 2 types of bonds:

- **Deposit** (also called a cash bond): Money is deposited with the government before you are released. **If you do not obey the conditions**, the Government of Canada will keep the money and CBSA may arrest and detain you again. **If you obey the conditions**, CBSA will eventually return the money to the bondsperson.
- **Guarantee** (also called a performance bond): The bondsperson promises to pay an amount of money if you do not obey release conditions. **If you do not obey the conditions**, the Government of Canada will collect the money from your bondsperson and the CBSA may arrest and detain you again. For a guarantee, the bondsperson must be a Canadian citizen or permanent resident of Canada and must show that they can afford to pay the bond and can ensure you will obey the release conditions.

The person who provides the bond is known as a bondsperson. At your hearing, the CBSA representative and the member may ask your proposed bondsperson for information that will help the member decide if the bond is suitable. Your bondsperson can provide this information before the hearing by completing a **Bondsperson Information form**.

You should know: A bondsperson can be a friend, a family member, a community worker or even yourself.

You should consider potential bondspersons, how much money could be available for the bond, and any other information you can provide to help the member decide. You should also make sure that the bondsperson is available during the hearing to answer questions from the CBSA representative and the member.

When you will receive a decision

After hearing from both the CBSA representative and you or your counsel, the Immigration Division member will decide whether you will be released or stay in detention. The member will usually give the decision and reasons for the decision at the end of the hearing. However, if the issues are very complicated, the member may need more time to review all the evidence and prepare their decision.

What happens if the member decides that you must stay in detention

If you are ordered to stay in detention, you will have another detention review within **7 days**. At the 7-day review, if the Immigration Division member orders your detention again, your detention will be reviewed again within **30 days**, and **every 30 days** after that until you are released or removed from Canada. At each detention review, you can present new facts to support a request for release. If your situation changes between detention reviews, you may ask the Immigration Division for an early hearing.

What happens after you are released

After you are released, if you stay in Canada, you must obey the conditions of your release. These conditions continue to apply to you until you are removed from Canada or until they have been changed or cancelled.

You can ask the Immigration Division to change or cancel your conditions

If your situation changes after conditions are imposed on you, write a letter to the Immigration Division explaining why you think your conditions should be changed and send a copy of the letter to the CBSA. You can use the **Application to vary conditions of release form** to help you write this letter.

Important: If the Minister has identified you as a **designated foreign national**, most of the information presented here does not apply to you and it may be 14 days before your first detention review. If you are a designated foreign national, the IRB member at your hearing will explain how detention reviews work for people in your situation.

To learn more: This information is based on Canada's Immigration and Refugee Protection Act, Immigration and Refugee Protection Regulations, the Immigration Division Rules, and the IRB Chairperson's Guideline 2 (Detention). You may wish to consult these documents for more details.