



Immigration and  
Refugee Board of Canada

Commission de l'immigration  
et du statut de réfugié du Canada

# Detention Review Hearings

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## **Who should read this pamphlet?**

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

## **What role does the IRB play in detention reviews?**

The IRB hears your case and decides whether you should be released or stay in detention. The IRB is an independent administrative tribunal that makes legally binding decisions-it is like a court, but less formal.

## **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 people who do not have the right to enter or stay in Canada, as well as for removing these people from the country.

## **You have been detained by the CBSA for immigration reasons. What happens next?**

If you are a permanent resident or a foreign national, you have the right to an independent hearing to review why you are being detained. When the CBSA detains you, it must tell the Immigration Division of the IRB. An IRB decision-maker called a member will then hold a detention review hearing within 48 hours of your detention or as soon as possible afterward. At the end of your hearing, the member will decide whether you will be released or stay in detention.

You will receive a notice telling you where and when your detention review hearing will be held.

A **permanent resident** is a person whom the Government of Canada has allowed to live permanently in Canada. Permanent residents may later apply to become Canadian citizens.

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

## **Who can help you?**

Detention is a serious matter. 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 a lawyer, and if you meet provincial eligibility criteria, you may be able to get free legal help. Some community or

religious organizations that help immigrants and refugees may also be able to help you. Ask a CBSA officer to help you find more information. If you decide to hire counsel or to have someone help you, you should do so as soon as possible.

## What happens at a detention review hearing?

The ID 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.

Next:

- The CBSA representative will explain why you are being detained (the “reasons for detention”) and present the facts in support of their position. More than one reason for detention can be given.
- You or your counsel will be given an opportunity to respond, to explain your opinion and to ask questions.
- If there are witnesses at the hearing to provide information, the CBSA representative, you, your counsel or the member may ask them questions.
- After hearing from both the CBSA representative and you or your counsel, the member will decide whether you will be released or stay in detention.

## What are the reasons for detention?

The CBSA will ask the member to have you stay in detention if they think that at least one of the following situations applies to you.

### 1) You are a danger to the public.

To support this claim, the CBSA may give examples of:

- past violent behaviour;
- criminal convictions for offences that involved violence, weapons, drugs or sex; or
- problems related to drug or alcohol addiction.

The CBSA can present any behaviour, activities and facts that support the claim that you should be considered dangerous.

► If the CBSA claims that you are a danger to the public, you can provide your own evidence to show the member why you do not think you are a danger.

### 2) You are unlikely to show up when asked to do so, for example at a hearing or for your removal from Canada.

To support this claim, the CBSA may give examples of times when you did not show up for an immigration appointment, did not show up to be removed from Canada,

broke the law, or were not reliable or trustworthy. The member will consider all of these elements when deciding whether you are unlikely to show up.

▶ If the CBSA claims that you would not show up, you can provide your own evidence to show the member that you will show up when you are asked to do so.

**3) 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.

If this is the case, the Minister will sign a document called a Minister's opinion. Once this document has been signed, the CBSA must make reasonable efforts to establish your identity.

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

The IRB member will consider your cooperation with the CBSA before making a decision.

**4) The CBSA thinks that 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 member can only consider whether the CBSA has a reasonable suspicion and is taking the necessary steps to investigate it

▶ Listen carefully to what the CBSA representative is saying. If you do not understand something, ask for more information.

The member will decide whether there are reasons to keep you in detention. Even if there are reasons for detention, the member may still order your release if a reasonable alternative to your detention exists.

## **What is an alternative to detention?**

An alternative to detention is conditions that the member can impose to offset the risk that you represent.

Examples of conditions include obeying a curfew, living with a specific person, or avoiding drinking alcohol or taking drugs. The member will decide which conditions are necessary in your specific case.

The member may also decide to require a bond in addition to the conditions of release. There are two types of bonds: cash bonds and performance bonds. The guarantor who provides the bond can be a friend, a family member or a community worker, for example. At

your hearing, the CBSA representative and the member may ask your proposed guarantor for information that will help the member decide if the guarantor is suitable.

► When you prepare for your hearing, you should think about reasonable alternatives. For example, you should consider potential guarantors, 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 guarantor is available to answer questions from the CBSA representative and the member.

- **Cash bond (or deposit)**

If the member orders a cash bond, you or another person (a guarantor) must pay a deposit (an amount of money) to the government. 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 and the CBSA may arrest and detain you again.

- **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 and the CBSA may arrest and detain you again.

- **Guarantor**

A guarantor is a trustworthy person who can make sure that you meet the conditions of your release. To provide a performance bond, your guarantor must be a Canadian citizen or a permanent resident of Canada. They must also be able to show that they can afford to pay the bond and that they can make sure you obey the conditions of your release.

After hearing from both the CBSA representative and you or your counsel, the member will decide whether you will be released or stay in detention. The member will usually give the decision and the reasons for this decision at the end of the hearing. However, the member may set a date for another hearing to give you the decision and the reasons if the issues are complex and the member needs more time to review all the evidence before making a decision.

## **What 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 **seven days**. If the member orders your detention again after the second review, 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. At each detention review, you can present new facts to support a request for release. For example, you can find a new guarantor who is willing to help you.

## **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 a long period of time has passed since the conditions were imposed and you have been obeying them, or if your situation has changed a lot since they were imposed on you. You must 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.

**Note: If the Minister has identified you as a “designated foreign national,” most of the information in this pamphlet does not apply to you. If you are a designated foreign national, the IRB member at your hearing will explain how detention reviews work for people in your situation.**