



Instructions Governing the Management of Refugee Protection Claims and Appeals Awaiting Front-end Security Screening

**Prepared by: Policy, Planning and
Corporate Affairs Branch**

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1. Application

These Instructions are issued by the Chairperson of the Immigration and Refugee Board of Canada (IRB) and are effective October 2, 2017.

These Instructions – originally issued in July 2004, and amended in March 2005 and December 2012 – govern the processing of refugee protection claims before the Refugee Protection Division (RPD) and appeals before the Refugee Appeal Division (RAD) of the IRB with respect to front-end security screening (FESS).

2. Background

In November 2001, the Government of Canada made a commitment that all persons claiming refugee protection in Canada would receive FESS to ensure that individuals who might pose a risk to Canada would not be granted protection and could not use the refugee determination process to gain admittance to Canada.

Security screening is conducted by the Canada Border Services Agency (CBSA) in partnership with the Canadian Security Intelligence Service (CSIS). The CBSA is responsible for informing the IRB that security screening has been completed. The IRB never receives the actual security screening report, but only a confirmation that it has been completed.

Responsibility for coordinating security screening rests with the CBSA. The IRB does not have control over, and is not otherwise involved in, conducting security screening. The IRB recognizes that delays in security screening can occur for several reasons and may not reflect on the merits of an individual's claim for protection, nor do they necessarily imply a security concern.

The purpose of the Instructions is to prioritize public security and system integrity while ensuring that the IRB processes claims quickly and fairly. The process outlined in these amended Instructions seeks to reduce inconveniences to the parties and counsel, and better mitigate inefficiencies associated with last-minute postponements of hearings for claims for which the RPD has not received confirmation that screening has been completed, while still allowing the CBSA reasonable time to confirm FESS.

3. Instructions

Members and other IRB personnel shall follow these Instructions in the processing of refugee protection claims before the RPD and appeals before the RAD.

1) Claims Before the Refugee Protection Division

To ensure the efficient and timely processing of refugee claims, the RPD will hear claims for refugee protection on their scheduled hearing date, even if confirmation of FESS has not been received.

In the interest of public security and in order to protect the integrity of the refugee determination process, **the RPD will not accept a claim for refugee protection for a period of six months from the date of referral, unless the RPD receives confirmation from the CBSA that FESS has been completed. The RPD may, however, reject a claim for refugee protection in the absence of confirmation of FESS.**

2) Appeals Before the Refugee Appeal Division

The processing of an appeal at the RAD shall be conducted in a similar fashion. **In the absence of confirmation of FESS, the RAD will not decide the appeal for a period of six months from the date of referral of the claim to the RPD, unless:**

- i. **confirmation of FESS has been received subsequent to the RPD decision;**
- ii. **the RAD is allowing the appeal and referring the matter to the RPD for re-determination;**
- iii. **the RAD is confirming the negative RPD determination.**

In applying these Instructions, the RAD may not be able to make a decision on an appeal within 90 days as specified in the *Immigration and Refugee Protection Regulations*;¹ such a circumstance will be treated as an exception to the time limit.²

3) Process – Refugee Protection Division

The IRB anticipates that confirmation of FESS for most claimants will be received in time for the scheduled RPD hearing.

In those cases where confirmation of FESS has not been received in time for the scheduled hearing, the RPD will proceed to hear the claim. If less than six months have elapsed since the referral of the claim to the RPD, the presiding member will inform the parties at the beginning of the hearing that confirmation of FESS has not been received and that these Instructions will be applied.

¹ Section 159.92(1) of the *Immigration and Refugee Protection Regulations* (IRPR), SOR/2002-227.

² Section 159.92(2) of the IRPR, *supra*.

At the conclusion of the hearing, the presiding member may:

- i. reject the claim orally in the presence of the parties or in writing at any time after reserving the decision; or
- ii. reserve the decision and accept the claim in writing after confirmation of FESS is received or after a period of six months has elapsed since the claim was referred to the RPD, whichever is earlier.

When a decision is reserved in these circumstances, the presiding member will also inform the parties at the conclusion of the hearing that the decision will be rendered in accordance with these Instructions.

Finalization of Claims

In those claims where confirmation of FESS has not been received within six months from the date of referral, the RPD will proceed to decide the claim and issue its decision and reasons.

Minister's Interventions

In order to intervene in a claim before the RPD, the Minister must provide a notice of intervention to the RPD and to the claimant at least ten days before the hearing;³ however, the RPD may extend the time limit where appropriate.⁴

It is recognized that security screening may inform the Minister's decision of whether or not to intervene. Where the Minister wishes to intervene in a claim in which the hearing has already been held, but the decision has not been rendered, the Minister may make an application to extend the time limit for intervening. If the application is made due to the result of information received from the security screening, this should be indicated in the application. In this regard, Ministers' counsel owe a duty of good faith and candour to the tribunal and the other parties.⁵ The claimant will also be given the opportunity to make submissions with respect to the late intervention of the Minister.

In addition to considering if it was the result of security screening received after the hearing which caused the Minister to intervene late, the RPD will also consider other factors, such as:

- whether the Minister's intervention raises issues of security or system integrity;
- whether the Minister is ready to proceed; and

³ Rule 29 of the *Refugee Protection Division Rules* (RPD Rules), SOR/2012-256.

⁴ Rule 70(d) of the RPD Rules, *supra*.

⁵ *Shen, Shiyuan v. M.C.I.* (F.C. no. IMM-3200-15), Fothergill, January 21, 2016; 2016 FC 70.

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- whether the claimant may be provided a reasonable opportunity to respond to the Minister's intervention.

Where the RPD allows a late Minister's intervention, the hearing will normally continue from the point where it had previously ended. RPD proceedings are recorded, and the RPD will provide a copy of the previous sittings' recordings to the parties upon request.

In cases where the RPD intends to hear a claim in the absence of FESS, the Minister may also make an application to change the date and time of the hearing in accordance with the *Rules of the Refugee Protection Division*. Following the hearing, the Minister may also make an application to delay the finalization and issuance of a pending decision. In deciding such applications, the RPD will take into account any relevant factors the parties bring forward including efforts made by the CBSA to complete security screening in a diligent and timely manner.

Abandonment Hearings

Abandonment hearings may proceed in the absence of confirmation of FESS. Should a claimant successfully argue that their claim should not be declared abandoned, the matter will then be heard and the decision rendered in accordance with these Instructions.

4) Process – Refugee Appeal Division

A rejected refugee claimant may appeal the RPD's decision to the RAD unless barred from doing so under the *Immigration and Refugee Protection Act (IRPA)*.⁶ After considering the appeal, the presiding member may issue the decision without further delay if confirmation of FESS has been received.

If confirmation of FESS has not been received, the presiding member may:

- i. confirm the negative RPD determination;
- ii. set aside the RPD determination and refer the matter to the RPD for re-determination; or
- iii. reserve the decision until either a period of six months has elapsed since the claim was referred to the RPD or confirmation of FESS has been received, whichever is earlier.

⁶ Section 110(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

Minister's Interventions

The RAD recognizes that security screening may inform the Minister's decision on whether to intervene. Nothing in these Instructions precludes ministerial interventions as described in the IRPA.

Abandonment Hearings

Abandonment hearings may proceed in the absence of confirmation of FESS. Should the person who is the subject of the appeal successfully argue that their appeal should not be declared abandoned, the matter will then be heard and the decision rendered in accordance with these Instructions.

4. Enquiries

For information, contact:

Director
Policy, Outreach and Engagement Directorate
Policy, Planning and Corporate Affairs Branch
Immigration and Refugee Board of Canada
Canada Building (Minto Place)
344 Slater, 14th floor
Ottawa, Ontario K1A 0K1

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5. Approval

Chairperson

Date