



ID/IAD PAPER HEARING

Pilot Project

May 2007



1. Introduction

- 1.1. In March 2006, the Chairperson of the Immigration and Refugee Board of Canada released the IAD Innovation Plan. This plan charted a course for the IAD as a less formal, more flexible tribunal that is able to deliver administrative justice more simply and quickly, and with the same high standard of fairness.
- 1.2. Recommendation 24 of the Report addressed removal order appeals and the streamlining of ID and IAD processes:

24. Streamline ID and IAD processes in removal order appeals involving criminality; eliminate the need for a transcript from the ID proceeding in non-contested hearings.

The IRB will seek ways to streamline processes currently carried out by the ID and the IAD while preserving the integrity of the separate functions of the two divisions. This would include such process initiatives as making the ID admissibility hearing a paper process where consent is given by the person involved; conducting an early review interview immediately following the ID hearing; and scheduling an IAD hearing immediately after the ID hearing.

Considerable time and resource savings could be achieved if the exhibits alone were provided, and the transcript of the ID hearing eliminated. In appeals in which the removal order is contested on legal grounds, or the issues are otherwise contentious, the transcript could be ordered by either the ID or the IAD.

- 1.3 Similarly, in an effort to achieve efficiency and streamlining, in 2004, the Immigration Division began to explore a paper process in the context of discussions on the streamlining of its processes.
- 1.4 In response, the IRB approved an approach to streamlining the processing of immigration admissibility cases and IAD appeal cases, with an aim to reduce both the inventory and processing times without an adverse effect on the quality of decision-making.



- 1.5 To that end, a Paper Hearing pilot project is being launched, to streamline the processing of cases involving permanent residents who are inadmissible on grounds of serious criminality under s. 36(1)(a) and who have a right to appeal of a removal order decision to the IAD, so that they can be decided more quickly without compromising fairness. This approach enhances efficiency of processing appropriate cases and optimizes the use of resources for determining cases, including freeing up resources to deal with more complex cases.
- 1.6 Under the current process, it generally takes a year or longer from the time the file is referred to the IRB for an admissibility hearing to the conclusion of the removal order appeal. The proposed pilot project aims to reduce the processing time at the IRB to approximately 30 days. The Canada Border Services Agency (CBSA) has operated a Screening Unit in Toronto for the past five years which has provided an opportunity to appellants in removal order appeals to make submissions and discuss a possible joint recommendation to settle their IAD appeal. In appropriate cases, there have been joint recommendations of the Minister's counsel and the appellant's counsel to have the subject of the proceedings placed on a removal order that is stayed for a number of years during which the person must comply with conditions.
- 1.7 This pilot project builds on the experience of the CBSA unit in Toronto and provides further efficiencies and streamlining opportunities.
- 1.8 The project will be managed by the Policy and Procedures Directorate, Operations Branch in collaboration with the Immigration Division and the Immigration Appeal Division. Ongoing monitoring and evaluation of this policy will be carried out under the direction of the Immigration Division and Immigration Appeal Division, with the support of Regional Executive Committees and the Operations Branch.

2. Purpose

- 2.1 This document establishes a framework that governs the Paper Hearing Pilot Project. The objective of the Pilot Project is to streamline the ID and IAD processes in appropriate cases, so that both ID and IAD processes are concluded within 30 days of receipt by the IRB, without compromising fairness. The key underlying principles of the process include:



- Efficiency (accuracy and simplicity of process);
- Consistency of process (a consistent approach to key elements of the process);
- Process integrity (transparency of process);
- Streamlining of processes of both tribunals, while preserving the independence of each tribunal;
- Consensual resolution by the parties

3. Application

- 3.1 The paper process applies to cases involving permanent residents who are inadmissible on grounds of serious criminality under s. 36(1)(a) and who have a right of appeal of a removal order to the IAD, where the parties have agreed to a joint recommendation for a stay of the removal order to the IAD, with agreed upon conditions.
- 3.2 Generally, the ID has held oral hearings to determine admissibility for s.36(1)(a) cases, at which the person who is the subject of the proceedings is in attendance (either in person or by live telecommunication).
- 3.3 The pilot project would require the informed consent of the parties to waive their rights to an oral ID hearing.
- 3.4 The following are criteria to ensure that the waiver of the oral hearing for s.36(1)(a) cases is appropriate:
 - The Minister's allegations are straightforward and not contested;
 - The person concerned is represented by professional counsel;
 - The person concerned does not require a designated representative

4. Process

The paper process would involve the following steps:



- 4.1 The CBSA will interview the person in question, to determine
 - a. If the person's case should be referred to the ID, and
 - b. Whether the case is suitable for a joint recommendation on a stay with conditions. Prior to the interview, the CBSA would advise the subject person to bring appropriate supporting documentation to the interview.
- 4.2 The CBSA would notify the subject of the proceedings and counsel that their case has been identified by CBSA as suitable for consideration into the pilot paper process.
- 4.3 Both parties would determine if they are prepared to agree to waive the oral hearing before the ID and submit a joint recommendation of a stay for consideration by the IAD.
- 4.4 The parties will complete the following documentation and submit to the IRB:
 - Notice of Admissibility Hearing (completed by the CBSA)
 - Concession of Allegations in a report pursuant to s.44(1) of the *IRPA*, Waiver of Oral Hearing at the ID, and Notice of Appeal to the IAD (which will be deemed effective on the date the removal order is signed by the ID member)
 - Joint recommendation of the parties to the IAD, including length of stay, conditions and supporting documentation
- 4.5 On receipt of the documents by the IRB, a Tribunal Officer will review the documentation received to ensure that the case is suitable for the paper process and ready for determination by the ID and IAD members.
- 4.6 The file will be assigned to an ID member to issue the removal order, if appropriate, or direct the file to be scheduled for a hearing.
- 4.7 Once the removal order is issued, the Case Officer will note on the Notice of Appeal that the Notice of Appeal is deemed effective as of the date of the issuance of the removal order, and will fill in the appropriate date.
- 4.8 The file will be transferred to the IAD member for determination. The IAD member will issue a stay of the removal order pursuant to the joint recommendation, if appropriate, or direct the file to be streamed into an appropriate case process, which may include scheduling for a removal order appeal hearing.



5. Scope and Duration of the Pilot

- 5.1 The pilot will be conducted in the Central Region for a six month period.
- 5.2 A final report will be provided to the Policy Advisory Committee upon completion of the pilot project.