

[Adjudication Division Rules \( I-2 -- SOR/93-47 \)](#)

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Updated to December 31, 2000

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## Adjudication Division Rules

SOR/93-47

Registration 28 January, 1993

### IMMIGRATION ACT

#### Adjudication Division Rules (SOR/93-47)

P.C. 1993-160 28 January, 1993

His Excellency the Governor General in Council, on the recommendation of the Minister of Employment and Immigration, pursuant to subsection 65(1)\* of the Immigration Act, is pleased hereby to approve the annexed Rules governing the activities of, and the practice and procedure in, the Adjudication Division of the Immigration and Refugee Board, made by the Chairperson of the Immigration and Refugee Board, in consultation with the Director General (Adjudication Division), the Deputy Chairperson (Convention Refugee Determination Division) and the Deputy Chairperson (Immigration Appeal Division), effective February 1, 1993.

\* S.C. 1992, c. 49, s. 55(1)

### RULES GOVERNING THE ACTIVITIES OF, AND THE PRACTICE AND PROCEDURE IN, THE ADJUDICATION DIVISION OF THE IMMIGRATION AND REFUGEE BOARD

#### SHORT TITLE

1. These Rules may be cited as the *Adjudication Division Rules*.

#### INTERPRETATION

2. In these Rules,

"Act" means the *Immigration Act*, (*Loi*)

"counsel" means a person who represents a party in any proceeding before the Adjudication Division;  
(*conseil*)

"director" means a director of the Adjudication Division; (*directeur*)

"held" means, in respect of an inquiry, held, reopened, resumed or continued; (*mener*)

"notice to appear" means a notice to appear referred to in rule 9; (*avis de convocation*)

"party" means the person concerned or the Minister; (*partie*)

"person concerned" means a person who is the subject of an inquiry or a person referred to in subrule 28(1); (*intéressé*)

"registrar" means a person designated pursuant to rule 4; (*greffier*)

"registry" means an office established by the Board pursuant to rule 3. (*greffe*)

## REGISTRY AND REGISTRAR

**3.** The Board shall establish one or more offices for the activities of the Adjudication Division, each of which is to be known as a registry.

**4.** The Board shall designate a person to be registrar at each registry.

## REQUEST FOR INQUIRY

**5.** (1) Where an inquiry is caused to be held pursuant to the Act, the senior immigration officer shall forward to the Adjudication Division a request for inquiry that contains the following information:

- (a) the name, sex, date of birth, civil status and citizenship of the person concerned;
- (b) the address and telephone number in Canada of the person concerned;
- (c) any report and direction that relate to the person concerned;
- (d) a statement as to whether the person concerned claims to be a Convention refugee;
- (e) a statement as to whether the person concerned is detained and if so, the place of detention;
- (f) where any members of the family who are dependent on the person concerned and who are in Canada are included for the purposes of subsection 33(1) of the Act, the name, sex, date of birth, civil status, citizenship, address and telephone number of those dependent family members;
- (g) the official language chosen by the person concerned for communication with the Adjudication Division;
- (h) where applicable, the language or dialect of the interpreter required by the person concerned for any proceeding;
- (i) the Canada Employment and Immigration Commission Client I.D. Number relating to the person concerned;
- (j) where applicable, the names of the family members of the person concerned who have been referred to the Adjudication Division for an inquiry and the file number of the Canada Employment and Immigration Commission relating to those family members;
- (k) the date on which the senior immigration officer forwards the request for inquiry; and
- (l) the name of the senior immigration officer.

(2) The senior immigration officer shall forward the information referred to in subrule (1) to the registry designated by the Adjudication Division.

## JOINDER

6. (1) The Adjudication Division may order that two or more inquiries be held jointly where the Adjudication Division believes that no injustice is thereby likely to be caused to any party.

(2) Subject to subsection (3), inquiries in respect of the legal or *de facto* spouse, dependant children, father, mother, brothers or sisters of the person concerned shall be held jointly.

(3) On application by a party, or on the adjudicator's own motion at the time of the inquiry, the adjudicator may order that inquiries be held separately, where the adjudicator believes that holding hearings jointly is likely to cause an injustice to any party.

## CHANGE OF VENUE

7. (1) A party may apply in accordance with rule 19 to the Adjudication Division to have a conference or hearing held at a place other than that which has been set.

(2) An application made under subrule (1) shall be accompanied by a statement of facts to support the application.

(3) The Adjudication Division shall grant the application made under subrule (1) if it is satisfied that doing so will not adversely affect the proper operation of the Adjudication Division, will provide for a full and proper hearing and will dispose of the inquiry expeditiously.

(4) Where an application made under subrule (1) is granted, the file relating to the inquiry shall be transferred to the registry of the place where the conference or hearing is to be held.

## POSTPONEMENT AND ADJOURNMENT

8. (1) Before the commencement of a hearing, a party may apply in accordance with rule 19 to the Adjudication Division to have the hearing postponed.

(2) Before the resumption of a hearing, a party may apply in accordance with rule 19 to the Adjudication Division to have the hearing adjourned.

(3) A party whose application for a postponement or adjournment was denied may reapply orally at the commencement or resumption of the hearing.

(4) The Adjudication Division, in determining whether a hearing shall be postponed or adjourned, may take into consideration, where applicable,

(a) whether the postponement or adjournment would unreasonably impede the proceeding;

(b) the efforts made by the parties to proceed expeditiously;

(c) the nature and complexity of the issues relevant to the proceeding;

(d) the nature of the evidence to be presented, and the likelihood of causing an injustice to any party by

proceeding in the absence of that evidence;

(e) counsel's knowledge of, and experience with, similar proceedings;

(f) the amount of time already afforded the parties for preparation of the case;

(g) the efforts made by the parties to be present at the hearing;

(h) the efforts made by the parties to make an application for a postponement or adjournment of the hearing at the earliest opportunity;

(i) the number of, and reasons for, any previous postponements or adjournments;

(j) whether the hearing was set peremptorily; and

(k) any other relevant facts.

## NOTICE TO APPEAR

**9.** (1) Where the Adjudication Division directs a party to appear before it at a conference or hearing, the Adjudication Division shall, in a notice to appear, set out

(a) the date, time and place set for the conference or hearing;

(b) the name and address in Canada of the person concerned;

(c) the Canada Employment and Immigration Commission Client I.D. Number relating to the person concerned;

(d) the names and addresses of the family members of the person concerned referred to in paragraph 5(1)(f);

(e) the purpose of the conference or hearing;

(f) the right of the person concerned and of any person referred to in paragraph (d) to be represented by counsel at their own expense;

(g) the requirement that the person concerned inform the Adjudication Division forthwith, in writing, of any change of address of the person concerned or of counsel of the person concerned; and

(h) that the person concerned could be arrested for failing to appear at the date, time and place set for the conference or hearing.

(2) The Adjudication Division shall serve the parties and any person referred to in paragraph (1)(d) with the notice to appear and a copy of any report and direction that relate to the person concerned who is subject of the inquiry.

## OFFICIAL LANGUAGES

**10.** At least 15 days before the date set for a conference or hearing, as the case may be, the person concerned shall notify the Adjudication Division, in writing, of the official language in which the person concerned chooses the conference or hearing to be conducted.

## INTERPRETER

**11.** (1) The Adjudication Division shall provide an interpreter to assist a party or a party's witness where the party advises the Adjudication Division, in writing, at least 15 days before the date set for a conference or hearing, as the case may be, that the party or witness does not understand or speak the language in which the conference or hearing is to be conducted, or is hearing impaired.

(2) The interpreter shall take an oath or make a solemn affirmation to interpret accurately any statements made, and to translate accurately any documents that the Adjudication Division may require to be translated, in the course of the conference or hearing.

## CONFERENCES

**12.** (1) The Adjudication Division may direct the parties, by a notice to appear, to attend a conference, that is to be held before or during a hearing, on any matter related to the inquiry, in order to provide for a full and proper hearing and to dispose of the inquiry expeditiously.

(2) At the conference the participants shall

(a) exchange the names and addresses of witnesses that they intend to call, copies of any document that they intend to produce and of any statement of the facts, information and opinions of which they are in possession and that they intend to produce as evidence at the hearing; and

(b) attempt to agree on means of simplifying the hearing and, as far as possible, define any pertinent issues, agree upon certain facts and receive documents.

(3) An agreement concluded at a conference shall be in writing and signed by the participants or given orally at the hearing and shall govern the hearing to the extent that the Adjudication Division considers appropriate in order to provide for a full and proper hearing and to dispose of the inquiry expeditiously.

(4) Forthwith after a conference, the adjudicator shall forward to the registry any written agreement concluded and a true copy of any documents that have been received during the conference.

## DISCLOSURE

**13.** A party who intends to call an expert witness at a hearing shall, at least 20 days before the date set for the hearing, serve on the other party a report signed by the expert witness, setting out the name, address and qualifications of the expert witness and a brief summary of the substance of the proposed testimony of the expert witness.

## APPLICATIONS FOR CONFIDENTIALITY

**14.** An application referred to in subsection 29(2) or 103(10) of the Act shall be made to the Adjudication Division by motion in accordance with subrules 20(2) to (7).

## WITNESSES

**15.** A party who calls a witness shall pay the witness the applicable fees and allowances set out in the *Federal Court Rules*.

**16.** (1) The Adjudication Division may, at the request of a party or of its own motion, exclude witnesses

from a hearing until they are called to testify.

(2) No person may communicate to a witness who has been excluded pursuant to subrule (1) any evidence or testimony that is given during the course of a hearing until after the witness has testified.

**17.** (1) A party who makes an application to summon a witness shall do so in writing and shall file it at the registry.

(2) Where a person fails to comply with a summons, the party who applied for the issuance of the summons may make an application in writing, accompanied by an affidavit setting out the facts on which the application is based, to the Adjudication Division for a warrant and shall file the application at the registry.

(3) An application made under to subrule (2) shall contain information to establish that

(a) the person named in the summons was served with the summons and was paid or offered a reasonable amount of attendance money but failed to comply with the requirements of the summons; and

(b) the appearance of the person named in the summons is necessary to ensure a full and proper hearing.

(4) A warrant issued on an application made under subrule (2) that directs a peace officer to cause the person named therein to be apprehended anywhere in Canada shall indicate the measures to be taken by the peace officer in respect of the detention or release of the person.

(5) The measures referred to in subrule (4) may include

(a) detaining the person in custody and forthwith bringing the person before the Adjudication Division; and

(b) releasing the person on a recognizance, with or without sureties, conditional on the person's appearance at the date, time and place specified, to give or produce evidence at a hearing before the Adjudication Division.

## PERSON CONCERNED IN CUSTODY

**18.** Where a person concerned is detained, the Adjudication Division may order the person who detains the person concerned to bring the latter in custody to a conference or hearing held in respect of the person concerned.

## APPLICATIONS

**19.** (1) Subject to subrule (2), every application that is provided for in these Rules, except an application referred to in rules 14 and 17 and subrule 21(3), shall be

(a) made by a party in writing;

(b) filed at the registry; and

(c) served on the other party.

(2) A party may make an application that is provided for in these Rules orally at a hearing where the adjudicator is satisfied that no injustice is likely to be caused to any party thereby.

(3) The Adjudication Division may determine an application when it is satisfied that all parties have been

given a reasonable opportunity to make representations.

## MOTIONS

**20.** (1) Every application that is not provided for in these Rules shall be made by a party to the Adjudication Division by motion, unless, where the application is made during a hearing, the adjudicator decides that, in the interests of justice, the application should be dealt with in some other manner.

(2) The motion shall consist of

(a) a notice specifying the grounds on which the motion is made;

(b) an affidavit setting out the facts on which the motion is based; and

(c) a concise statement of the law and of the arguments that are relied on by the applicant.

(3) The motion shall be

(a) served on the other party to the proceeding; and

(b) filed in duplicate, together with proof of service thereof, at the registry within five days after the date of service.

(4) Evidence in support of a motion shall be introduced by affidavit, unless the Adjudication Division decides that, in the interests of justice, the evidence should be introduced in some other manner.

(5) The other party may, within seven days after being served with a motion, file at the registry a reply stating concisely the law and arguments relied on by the party, accompanied by an affidavit setting out the facts on which the reply is based.

(6) The applicant may, within seven days after being served with a reply, file a response thereto at the registry.

(7) A copy of the reply and affidavit filed pursuant to subrule (5) and of the response filed pursuant to subrule (6) shall be served on the other party within seven days after the date of service of the motion or reply, as the case may be.

(8) The Adjudication Division, on being satisfied that no injustice is likely to be caused, may dispose of a motion without a hearing.

## DECISIONS

**21.** (1) Where, at the conclusion of an inquiry, the adjudicator decides to make a removal order or conditional removal order against a person concerned, the adjudicator shall

(a) date and sign the order and decision that sets out the basis on which the order was made; and

(b) where the person concerned does not have grounds to appeal the decision to the Appeal Division pursuant to section 70 of the Act, inform the person and the person's counsel by a notice in writing of the person's right to file an application for leave to commence an application under section 18.1 of the *Federal Court Act*.

(2) A copy of the documents referred to in paragraphs (1)(a) and (b) shall be

(a) where the parties or their counsel, or both, are present when the Adjudicator makes the order, given forthwith to the parties or their counsel or both, as the case may be; and

(b) where the parties or their counsel, or both, are absent when the adjudicator makes the order, served on the parties or their counsel or both, as the case may be.

(3) The adjudicator shall, upon a request in writing of a party that is filed within 10 days after the conclusion of an inquiry, provide written reasons for the adjudicator's decision.

## SERVICE AND FILING

**22.** (1) Subject to subrule (5), service of any document in the course of any proceeding under these Rules shall be effected by personal service, by prepaid regular mail, by any mail service whereby the sender is provided with an acknowledgement of receipt, or by the telephone transmission of a facsimile of the document in accordance with subrule (3).

(2) A copy of any document served on a party pursuant to subrule (1) shall also be served on that party's counsel, if any.

(3) A document that is served by telephone transmission of a facsimile shall include a cover page setting out

(a) the sender's name, address and telephone number;

(b) the name of the addressee;

(c) the total number of pages transmitted, including the cover page;

(d) the telephone number from which the document is transmitted; and

(e) the name and telephone number of a person to contact in the event of transmission problems.

(4) Service by prepaid regular mail shall be considered to be effected on the date that is seven days after the date of mailing.

(5) Where service cannot be effected in accordance with subrule (1), the Chairperson may direct that service be effected by such means as will, to the extent possible, provide a party with the document and as will not likely cause injustice to any party.

(6) After service of a document has been effected by a party, the party shall file proof of service thereof at the registry.

**23.** The person concerned and any family members of the person concerned referred to in paragraph 5(1)(f) shall notify the Adjudication Division forthwith in writing of their addresses and the name and address for service of their counsel, and any changes thereto.

**24.** (1) A document shall be filed at the registry by serving it on an employee of the registry at which the file relating to the inquiry or the application referred to in subrule 29(1) is held.

(2) The filing of a telephone transmission of a facsimile shall be considered to be effected on the date on

which it is received by the registrar, as stamped on the facsimile.

(3) All documents submitted in the course of any proceeding under these Rules in a language other than English or French shall be accompanied by a translation in English or French that is certified to be correct, unless the Adjudication Division decides that a translation is not necessary to provide for a full and proper hearing.

## TIME LIMITS

**25.** The Adjudication Division may, on application by a party made in accordance with rule 19 either before or after a time limit set out in these Rules has expired, shorten or extend the time limit, in order to provide for a full and proper hearing.

## GENERAL

**26.** These Rules are not exhaustive and, where any matter that is not provided for in these Rules arises in the course of any proceeding, the Adjudication Division may take whatever measures are necessary to provide for a full and proper hearing and to dispose of the matter expeditiously.

**27.** Where a party does not comply with a requirement of these Rules, the Adjudication Division, on application made by the party in accordance with rule 19, may permit the party to remedy the non-compliance or may waive the requirement, where it is satisfied that no injustice is thereby likely to be caused to any party or the proceeding will not be unreasonably impeded.

## REVIEW OF REASONS FOR DETENTION

**28.** (1) Where, pursuant to subsection 103(6) of the Act, a person concerned must be brought before an adjudicator for a review of the reasons for the continued detention of the person concerned, a senior immigration officer shall forward to the Adjudication Division forthwith the following information:

(a) the date and time before which the hearing to review the reasons for the continued detention must be held;

(b) the name and place of detention of the person concerned;

(c) the Canada Employment and Immigration Commission Client I.D. Number relating to the person concerned;

(d) the official language chosen by the person concerned for the hearing for the purposes of rule 10;

(e) where applicable, the language or dialect of the interpreter required by the person concerned for the purposes of rule 11;

(f) the name, address for service and telephone number of the counsel of the person concerned, if any;

(g) the date and time at which the person concerned was detained;

(h) the purpose of the detention; and

(i) whether the review is being held after 48 hours, seven days or 30 days of detention.

(2) The senior immigration officer shall forward the information referred to in subrule (1) to the registry

designated by the Adjudication Division.

**29.** (1) Where a person concerned referred to in subrule 28(1) wishes to be brought before an adjudicator for a review of the reasons for detention pursuant to subsection 103(6) of the Act, the person concerned shall so apply to the Adjudication Division in accordance with rule 19.

(2) The application referred to in subrule (1) shall be accompanied by information referred to in paragraphs 28(1)(d) and (e) and a statement that sets out the reasons in support of the application.

**30.** Rule 7 and the time limits referred to in rules 10 and 11 do not apply in respect of the review of the reasons for detention referred to in rules 28 or 29.