

Being arrested and detained for immigration reasons

This fact sheet is for community workers and advocates working with people who are not Canadian citizens and who have been arrested and detained by the Canada Border Services Agency (CBSA). Throughout the fact sheet, “you” refers to the person being investigated, arrested, or detained. This is meant to make it easier to pass the information on to those who need it.

People who are not Canadian citizens can be arrested and detained by Canada Border Services Agency (CBSA) for certain reasons. CBSA works with Citizenship and Immigration Canada (CIC). CBSA has primary responsibility for enforcing immigration law, including arrest, detention, and removal.

The law is complicated. If you are not a Canadian citizen and you are arrested or detained, try to get legal help from someone who knows immigration law.

What are my rights if I am questioned or arrested?

CBSA immigration officers can ask you questions at a port of entry to decide if you have a right to enter Canada. This interview is called a **port of entry examination**. A port of entry is a border crossing, international airport, or seaport.

You must answer the officer’s questions. Your answers can be written down and used against you in immigration proceedings. If you do not speak English or French, you should ask for an interpreter.

If a CBSA officer thinks that you should not be allowed to enter or remain in Canada because you have broken an immigration rule, you will have to attend an **admissibility hearing**.

At an admissibility hearing:

A member of the Immigration Division of the Immigration and Refugee Board (IRB) will be in charge of the hearing and will make a decision on your case. A hearings officer, also known as Minister’s counsel, will represent CBSA and state the case against you. Both the hearings officer and the IRB member can ask you questions that you will have to answer.

You have the right to a hearing in English or in French. If you do not speak English or French, you have the right to have a qualified interpreter at your hearing. The IRB provides interpreters.

You also have the right to legal counsel at an admissibility hearing. [To find out about getting legal help](#), see pages 7 and 8.

Outside of an immigration examination or a hearing, you do not have to answer questions from CBSA or CIC officers. But if they ask who you are, you should tell them.

If you are arrested by CBSA or the police, the arresting officer must tell you why. The arresting officer can search you.

If you are detained at a port of entry or arrested inside Canada, you have the right to consult with a lawyer. The officer who arrests or detains you must tell you this. You do not have to answer questions, and you can say that you do not want to say anything until you speak to a lawyer. However, it may be a good idea to answer if you are being arrested because of a simple mistake.

For example, you could be arrested because you did not show up for an appointment with CIC or CBSA. But you could be released if you could prove that it was not your fault. This might happen if you did not receive any notice of the appointment because CIC or CBSA sent the notice to an old address even though you gave them your new address.

When can I be arrested or detained?

You can be arrested or detained when you arrive in Canada, while you are inside Canada, or at an admissibility hearing.

You can be arrested and detained without a warrant at a port of entry or inside Canada, unless you are a permanent resident or a protected person. (A protected person is someone whose claim for refugee protection has been accepted by the IRB or whose application for pre-removal risk

assessment (PRRA) has been accepted by CIC.) This can happen if there are reasonable grounds to believe that you are **inadmissible** (cannot be admitted) to Canada **and**:

- you are a **danger** to the public, or
- you are **not likely to appear** for an examination, a hearing, or removal from Canada, or
- you are **not likely to appear** at a proceeding that could lead to a removal order by the Minister.

Whether or not you are inadmissible depends on the admissibility requirements that apply to you. These requirements depend on the status you have or the status you want to get. For example, the requirements for visitors are different from those for people immigrating to Canada.

You can also be arrested and detained if immigration authorities are not sure who you are.

If you arrive in Canada without proper identity documents, you may be detained. If you do not have a passport, you might be able to prove who you are by using other genuine documents, such as your birth certificate, school certificate, or driver's licence. If you have no documents, a family member or a friend already in Canada may be able to prove who you are by making a sworn statement. You can also try to have someone in your home country send you identity documents.

At a port of entry, CBSA can detain you if they think they need to do this to complete the port of entry examination or if they suspect that you are inadmissible for security reasons or because you violated human or international rights.

If you are investigated by police for some other reason, they can find out if there is an immigration warrant for your arrest or if there are grounds to arrest and detain you under immigration law. For example, if you are pulled over while driving, the police could check your immigration status and arrest and detain you for CBSA.

Here are some examples of situations in which you might be detained after being arrested:

- You do not have identity documents that are satisfactory to CIC.
- CBSA thinks that you are lying about your reason for coming to Canada.
- CBSA thinks that if you enter Canada as a visitor, you will stay instead of leaving when you are supposed to.
- You were deported or excluded from Canada but you came back without the written permission of an immigration officer.
- You entered Canada illegally or used false documents.
- You have been working in Canada without a work permit.
- You stayed in Canada after your visitor's status expired.
- You moved and did not give CIC or CBSA your new address.
- You did not show up for an interview, a hearing, or removal.
- You broke a condition that was part of a previous release order.

If I am arrested or detained, where will I be held?

First, you will be taken to an immigration office or police station for questioning. Later, you will be held at an immigration holding centre or jail.

If there is no immigration holding centre in your area, you will be held in a jail. You could also be kept in a jail if you are considered a danger to others or to yourself. For example, you will most likely be kept in a jail if you have criminal charges or convictions, or if you have threatened to commit suicide.

If I am detained by CBSA, what is the process for getting released?

Anyone who is detained is supposed to get a detention review within 48 hours of being arrested. However, if you are arrested on a Thursday or a Friday, your hearing will not take place until Monday.

You could also be released by CBSA before your detention review.

A **detention review hearing** is held before a member of the Immigration Division of the IRB. At this hearing, the IRB member will review your case and the reasons for your detention, and will decide whether to order your release. A hearings officer will say why you were detained and will recommend that you continue to be detained or that you be released with specific conditions. You can give evidence and say why you should be released. It is up to you to convince the IRB member to release you.

You have the right to a hearing in English or in French. If you do not speak English or French, you have the right to have a qualified interpreter at the hearing. The IRB provides interpreters.

You have the right to legal counsel at a detention review, but the IRB member will not adjourn the hearing to give you time to get counsel. [To find out about getting legal help with a detention review hearing](#), see pages 7 and 8.

The IRB member will order your release if he or she is satisfied that:

- you are likely to appear for hearings, interviews, or removal, which you *might* be able to show by having a [bondsperson](#), also known as a guarantor (see page 6),
- you are not a danger to others or to yourself,
- if the hearings officer says that there are questions about your identity, either you are helping prove who you are or CBSA is not making reasonable efforts to find out who you are, and
- CBSA does not suspect that you are inadmissible for security reasons or because you violated human or international rights.

The IRB member will consider a number of factors in deciding whether or not to order your release. Here are some of these factors:

- Do you have a place to live if you are released?
- Have you failed to show up for interviews, hearings, or removal in the past?
- Have you failed to obey the conditions of your release in the past?

- How soon are you likely to be removed from Canada?
- Are there circumstances that are likely to delay your removal, such as outstanding criminal charges or a pending refugee claim?
- Is CBSA unable to remove you because of delays in getting a travel document for you?
- Have you been convicted in Canada of a sexual offence or an offence involving violence, weapons, or drugs?
- Have you been convicted of or charged outside of Canada with a sexual offence or an offence involving violence, weapons, or drugs?
- Are you from a country to which Canada has suspended removals? (*Note: This is not a factor if you have been convicted of a criminal offence.*)
- Do you have strong ties in Canada?
- Have you co-operated by giving CBSA information about who you are, including your date and place of birth, the names of your parents, and the route you took to get to Canada?
- Have you signed an application for a travel document?
- Did you give CBSA your passport?
- Have you used false documents?
- Have you destroyed identity or travel documents?
- Have you given CBSA conflicting information about your identity?
- Did you flee another country where you were charged with an offence that would also be a crime in Canada?
- Have you been involved in people smuggling or human trafficking?

Before your detention review, it is a good idea to think about who can be a bondsperson for you. The section on page 6 called *Who can be a bondsperson?* explains what a bondsperson does and how to choose one. Having a bondsperson can help you get released, especially if there are factors that would otherwise result in your detention. It can be very difficult to convince the IRB member to release you unless you have a bondsperson.

To be released, you will have to agree to some conditions.

If you are less than 18 years old, you should not be detained unless there are no other options. Before ordering your detention, the IRB member must consider what is best for you. The member must also consider:

- whether there is a child care agency or child protection service, such as a Children's Aid Society, that could arrange for your care and protection,
- whether you are at risk of being controlled by people smugglers or human traffickers,
- where you would be detained, under what conditions, and for how long,
- whether you could be detained separately from adults (unless they are family members or other adults who are responsible for you), and
- what services are available in the detention facility, including education, counselling, and recreation.

If you are detained for more than seven days, you are supposed to get education in the immigration holding centre.

What happens if I am not released?

If you are not released at your detention review, you must be given another detention review in seven days. If you are not released then, your detention must be reviewed every 30 days after that, until you are either released or removed from Canada. If your situation changes, you can ask in writing for an early review. For example, if you find someone who can be a bondsperson or if you get identity documents, you can ask for an early review.

There is no clear limit to how long you can be detained, but you cannot be held indefinitely. Your detention might be considered indefinite and you might be released if, for example, you have been waiting a long time for a travel document from your country so that CBSA can remove you from Canada and no one can say when you might get one.

Before ordering your continued detention, a member of the Immigration Division of the IRB must consider:

- why you were detained,
- how long you have already been in detention,
- how long you are likely to remain in detention,
- whether you or CBSA has caused any unexplained delays,
- whether you have not co-operated with CBSA, and whether this has contributed to your lengthy detention,
- whether CBSA has not shown enough effort, for example, in following up with your country to get you a travel document, and

- whether there are any alternatives to detaining you.

The IRB member will also consider whether, in previous detention reviews, you were found to be a danger to the public.

If you have been in detention for a long time, it is a good idea to get legal advice.

If I am released, what terms and conditions might apply to me?

If you are released, you will have to agree to certain terms and conditions. For example, you will have to:

- provide the address where you will live and the address of your bondsperson,
- agree that if you or your bondsperson move, you will report the change of address to CBSA before the move,
- agree to report to a CBSA office or for a hearing at the IRB when asked to, and
- co-operate in getting travel documents needed to remove you from Canada.

You might also have to:

- give up your passport,
- agree to report to a CBSA office regularly,
- agree to supervision, for example, by the Toronto Bail Program, or
- agree to other terms and conditions that are considered necessary in your case.

In most cases, the terms of a release order will require a cash bond (a deposit of money) or a performance bond (a guarantee

of money), or a combination of both of these. This means that you will need a bondsperson.

Who can be a bondsperson?

To be accepted as a bondsperson, a person must be:

- a Canadian citizen or permanent resident living in Canada,
- at least 18 years old, and
- not in default of another immigration guarantee.

A bondsperson must have the money for a cash bond or be able to show that they can get the money for a performance bond from a source other than you. For example, they could show proof that they own property, have savings, or have an income from work.

Usually, a bondsperson who is relying on income from work for a performance bond will need to have an annual income that is seven times the amount of the bond. So if the bond is for \$5,000, your bondsperson would need to have an income of \$35,000 a year. They will need to prove that income by showing copies of T4 slips from their employers. Or, if they are relying on income from self-employment, they will need to show the Notice of Assessment they received from the Canada Revenue Agency after filing the most recent income tax return.

Your bondsperson must also be someone who knows you well enough to make sure that you follow the terms and conditions of your release. If you can arrange to live with or near your bondsperson, this can sometimes help persuade an IRB member to order your release.

The Toronto Bail Program can sometimes provide an alternative for people who do not have a bondsperson and who plan to live in the Greater Toronto Area. To apply for supervision by the Bail Program, you can contact them at **416-861-2422**.

If you were detained as a danger to the public, having a bondsperson might not be enough to get you released. You may want to get legal advice.

If you are released on a cash bond and you break any of the terms and conditions of your release, CBSA will keep the money. If you are released on a performance bond and you break the terms and conditions of your release, the bondsperson will have to pay the money to the Canadian government. This will happen unless you or the bondsperson can show that you had a good reason for breaking the terms and conditions. For example, if you could not go to a hearing or appointment with CIC because you were in the hospital, CBSA might not keep the money or require the bondsperson to pay.

A bond remains in place until you get status in Canada or you are removed by CBSA.

Can I get legal help?

You have the right to legal counsel at a detention review or an admissibility hearing.

If you need a lawyer but cannot afford one, you might be able to get a legal aid certificate to pay for a lawyer.

If you know a lawyer who is willing to represent you at your detention review and you have a good case, you might be able to

get a certificate. Legal Aid Ontario does not usually give certificates for admissibility hearings.

If there are legal reasons to challenge in court the decision made at an admissibility hearing or a detention review, you might be able to get a legal aid certificate, but this is rare.

If you are detained and you want to apply for legal aid, ask to see an applications officer from Legal Aid Ontario. In most jails, you apply for a legal aid certificate by having a video interview.

You can also find out how to get help by calling the local legal aid office or community information centre.

You can usually find your local legal aid office by looking under "Legal Aid" in your phone book. You can also check Legal Aid Ontario's web site at www.legalaid.on.ca or phone:

Toll-free outside Toronto... **1-800-668-8258**
In Toronto..... **416-979-2352**
Toll-free TTY..... **1-866-641-8867**
TTY in Toronto **416-598-8867**

The Refugee Law Office can represent people at detention reviews in the Toronto area at the Toronto Immigration Holding Centre, the Toronto West Detention Centre, and the Vanier Correctional Centre for Women, and in Lindsay at the Central East Correctional Centre. Staff from the Refugee Law Office visit the Toronto Immigration Holding Centre twice a week.

To qualify for this service, you must be financially eligible for legal aid, but you do not need to apply for a legal aid certificate. You do not have to be a refugee claimant.

If you have questions about detention, you can contact the Refugee Law Office at **1-800-668-8258** or **416-977-8111**. They accept collect calls from people in detention.

Some community legal clinics also help people in detention. Legal clinic services are free to people who have low incomes.

You can usually find the community legal clinic nearest you by looking under “Legal Aid” or “Lawyers” in your phone book. You can also check Legal Aid Ontario’s web site at www.legalaid.on.ca or phone:

Toll-free outside Toronto... **1-800-668-8258**
In Toronto..... **416-979-2352**
Toll-free TTY..... **1-866-641-8867**
TTY in Toronto **416-598-8867**

Where else can I get help and information?

For more help, you can contact a community organization that serves immigrants and refugees, or a religious organization or faith group. If you are detained in a jail, you can ask to speak to the chaplain.

People detained for immigration reasons in Ontario can call the Canadian Red Cross, First Contact Program, toll free at **1-866-902-4993**. First Contact gives information and makes referrals. They take calls 24 hours a day, seven days a week.

The Toronto Refugee Affairs Council (TRAC) helps people detained at the Toronto Immigration Holding Centre by giving them information and making referrals. The TRAC office number is **416-401-8537**.

This publication contains general information for people in Ontario. It is not a substitute for getting legal advice about your particular situation.

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