

# ENF 26

Appeals at the Refugee Appeal Division of the Immigration and Refugee Board of Canada

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**Note:** The Minister of Immigration, Refugees & Citizenship Canada (IRCC) remains the Minister of Citizenship & Immigration in the appended templates until such time as the Ministry’s name is officially changed to the Ministry of Immigration, Refugees & Citizenship Canada.

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**1. What this manual chapter is about**

This manual chapter outlines the legislation, Canada Border Services Agency (CBSA) departmental policy and the Immigration and Refugee Board (IRB) rules pertaining to appeals and interventions at the Refugee Appeal Division (RAD) of the IRB.

In addition, this manual chapter identifies the role and responsibilities of a CBSA hearings officer as the delegate of the Minister of Immigration, Refugees and Citizenship Canada (IRCC) or Minister of Public Safety and Emergency Preparedness (PS) for RAD appeals and interventions.

**2. Program objectives**

The RAD considers appeals against decisions of the Refugee Protection Division (RPD) that have either allowed or rejected claims for refugee protection. It is an error-driven exercise. The *Immigration and Refugee Protection Act* (IRPA) gives certain refugee claimants (some refugee claimants do not have access to the RAD) and the Minister the opportunity to appeal an RPD decision based on error in law, in fact or in mixed law and fact.

**3. Coming into force**

The RAD came into force on December 15, 2012 (see Statutory Instruments/2012-94).

**Note:** A drafting error in the *Protecting Canada’s Immigration System Act* that allowed certain categories of asylum claimants from the previous system to appeal to the RAD has been corrected. This change came into effect on June 26, 2013 with Royal Assent for the *Economic Action Plan Act 2013, Part I* (EAPA). Pursuant to section 167 of the EAPA, asylum claimants who were referred to the IRB between August 15, 2012 and December 14, 2012 and whose claims had not been decided by the RPD as of June 26, 2013 do not have access to the RAD. Those claimants whose claims were referred to the IRB between August 15, 2012 and December 14, 2012 and their claims had been decided by the RPD before June 26, 2013 are entitled to access the RAD.

**4. Definitions**

**Note:** References to *IRPA* appear in the text with an "A" prefix followed by the section number. References to the *Immigration and Refugee Protection Regulations* (IRPR) appear with a "R" prefix followed by the section number.

<p>Designated Country of Origin (DCO)</p>	<p>Countries designated by the Minister under A109.1. The current list of DCOs can be found at <a href="http://www.cic.gc.ca/english/refugees/reform-safe.asp">http://www.cic.gc.ca/english/refugees/reform-safe.asp</a></p> <p>On July 23<sup>rd</sup>, 2015 the Federal Court (2015 FC 892) found the restriction under A110(2)(d.1) unconstitutional. Since that date claimants from DCO countries have had a right to appeal to the RAD.</p> <p>Note that the IRB considered failed claimants deemed to have received their RPD decision by July 8, 2015 (15 days before the FC decision) to be within the time limit to file an appeal at the RAD.</p>
<p>Designated Foreign Nationals</p>	<p>A DFN is a foreign national – other than a foreign national</p>

(DFN)	<p>referred to in A19 – who is part of a group that has been designated as an irregular arrival under A20.1(1) unless, on arrival, the foreign national holds the visa or other document required under the regulations and, on examination, the officer is satisfied the foreign national is not inadmissible [A20.1(2)].</p> <p>A designation may be made under IRPA A20.1.(1) regarding an arrival in Canada of a group of persons retroactively to March 31, 2009 [<i>Protecting Canada’s Immigration System Act</i> (Related Provisions 2012, c.17) s.81].</p> <p>A claimant who is a DFN has no right of appeal to the RAD [A110(2)(a)].</p>
Exception to the Safe Third Country Agreement	<p>Persons arriving at a Canadian land border port of entry from the United States (US) who make a claim for refugee protection may have their claim determined by the IRB if they meet at least one of the exceptions to the Safe Third Country Agreement. The Agreement was signed between Canada and the US dated December 5, 2002 and came into effect on December 29, 2004. These exceptions are outlined in regulations made under A102(1)(c).</p> <p>There is no right of appeal to the RAD when an exception to the safe third country agreement applies to the claimant [A110(2)(d)].</p>
No Credible Basis (NCB)	<p>The RPD must state in its reasons for the decision that there is no credible basis for the claim if it is of the opinion that there was no credible or trustworthy evidence on which it could have made a favourable decision [A107(2)].</p> <p>There is no right of appeal to the RAD for RPD decisions that have NCB [A110(2)(c)].</p>
Manifestly Unfounded Claim (MUC)	<p>The RPD must state in its reasons for the decision that the claim is manifestly unfounded if it is of the opinion that the claim is clearly fraudulent [A107.1].</p> <p>There is no right of appeal to the RAD for a MUC [A110(2)(c)].</p>
Vacation	<p>The RPD may vacate a decision to allow a claim, if on application by the Minister, the RPD finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter. If the application is allowed, the claim will be deemed to be rejected and the decision that led to the conferral of refugee protection will be nullified.</p> <p>There is no right of appeal to the RAD for a decision of the RPD allowing or rejecting an application by the Minister to vacate a decision allowing a refugee protection claim [A110(2)(f)].</p>
Cessation	<p>On application by the Minister the RPD may determine that the refugee protection referred to in A95(1) has ceased for any of the reasons described in A108(1). If the application is allowed, the claim of the person is deemed to be rejected [A108(2), 108(3)].</p> <p>There is no right of appeal to the RAD for a decision of the RPD allowing or rejecting an application by the Minister for a</p>

	determination that refugee protection has ceased [A110(2)(e)].
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## 5. Tables showing applicable provisions in IRPA, IRPR and RADR

The tables below summarize the provisions of the IRPA, IRPR and the RAD Rules (RADR) that are applicable to refugees and to persons in need of protection in the context of CBSA-led appeals and interventions before the RAD.

**Table 1: Legislative provisions concerning the protection of refugees**

<b>For information on:</b>	<b>Refer to section(s):</b>
Definitions	A2
Objectives	A3
Designation – human smuggling or other irregular arrival	A20.1
Conferral of refugee protection	A95(1)
Definition of protected person	A95(2) and A97
Definition of Convention refugee	A96
Definition of person in need of protection	A97
Exclusion from the definition of Convention refugee or from the definition of person in need of protection	A98
Claim for refugee protection	A99
Eligibility of refugee protection claim	A100 and A102
Ineligibility of refugee protection claim	A101
Suspension of a refugee protection claim by the RPD	A103
Notice of ineligibility	A104
Extradition procedure	A105
Credibility of claimant	A106
Determination on refugee claims by the RPD	A107
No credible basis	A107(2)
Manifestly unfounded refugee protection claim (MUC)	A107.1
Cessation of refugee protection by the RPD	A108
Vacation of refugee protection by the RPD	A109
Designated countries of origin (DCO)	A109.1

**Table 2: IRPA provisions concerning or impacting the RAD**

<b>For information on:</b>	<b>Refer to section(s):</b>
Appeal to RAD	A110
Decision of the RAD	A111
Regulations	A111.1
Composition of the IRB / Head Office and Staff / Duties of Chairperson	A151 to A160
Functioning of the IRB	A161
Jurisdiction of each Division of the IRB	A162
Composition of panels	A163
Presence of parties	A164
Powers of a commissioner	A165
Proceedings – all Divisions	A166
Counsel and representation	A167
Abandonment and abuse of process	A168
Decisions and reasons	A169
No reopening of claim or application when RAD or the Federal Court has made a final determination	A170.2
RAD Proceedings	A171

No reopening of appeal when Federal Court has made a final determination	A171.1
Remedial and disciplinary measures	A176 to A186
Transitional provision: pending or in progress applications, proceedings or matters under former Act are now governed by the new Act upon coming into force	A190
Transitional provision: decision by RPD from a hearing commenced by the CRDD is not subject to appeal under A110	A194
Transitional provision: decision by CRDD made before coming into force of A195 is not subject to an appeal under A110	A195
Leave for judicial review (JR)	A72
Minister's right to make an application for leave to commence an application for JR of any RAD decision whether or not the Minister took part in the RPD proceedings	A73
<i>Balanced Refugee Reform Act</i> (Related Provision: 2010, c.8, s.33, as amended by Related Provision 2012, c.17, s.66: refugee protection claim referred	RP 33
Related Provision: 2010, c.8, s.36, as amended by Related Provision 2012, c.17, s.68: no appeal	RP 36
Related Provision: 2010, c.8, s.37, as amended by Related Provision 2012, c.17, s.68: decision set aside in judicial review	RP 37

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**Note:** The Convention Refugee Determination Division (CRDD) was the administrative tribunal responsible for determining refugee claims under Canada's previous *Immigration Act*. The CRDD was replaced by the RPD upon the coming into force of IRPA in June 2002.

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**Table 3: RADR & IRPR provisions concerning the RAD**

<b>For Information on:</b>	<b>Refer to section(s)</b>
Definitions	RADR 1
Coming into force	RADR 69
<b>Rules applicable to RAD appeals made by a person who is the subject of an appeal</b>	
Filing an appeal	RADR 2(1)
Content of notice of appeal	RADR 2(3)
Time limit for notice of appeal	RADR 2(4), IRPR 159.91
Perfecting the appeal	RADR 3(1) and (2)
Content of the appellant's record	RADR 3(3) and (4)
Time limit for appellant's record	RADR 3(5), IRPR 159.91
Intervention by the Minister	RADR 4(1)
Content of notice of intervention	RADR 4(2)
Minister's intervention record (optional)	RADR 4(3) and (4)
Proof of service	RADR 4(5)
Reply to Minister's intervention	RADR 5
Extension of time to file or perfect	RADR 6
Decision without further notice	RADR 7
<b>Rules applicable to RAD appeals made by the Minister</b>	
Filing an appeal	RADR 8(1)
Content of the notice of appeal	RADR 8(2)
Proof of service	RADR 8(3)
Time Limit for notice of appeal	RADR 8(4)
Perfecting the appeal	RADR 9(1)

Content of appellant's record (optional)	RADR 9(2), (3)
Proof of service	RADR 9(4)
Time limit	RADR 9(5)
Response to the Minister's appeal	RADR 10(1)
Content of notice of intent to respond	RADR 10(2)
Content of respondents record	RADR 10(3), (4)
Proof of service	RADR 10(5)
Time Limit	RADR 10(6)
Minister's reply	RADR 11(1)
Reply record (optional)	RADR11(2), (3)
Proof of service	RADR 11(4)
Extension of time	RADR 12
Decision without further notice	RADR 13
<b>Rules applicable to all RAD appeals</b>	
Communicating with the RAD	RADR 14 & 15
Counsel of Record	RADR 16 - 20
RPD record	RADR 21
Language of the appeal	RADR 22
Designated Representative	RADR 23
Specialized Knowledge	RADR 24
Notice of Constitutional Question	RADR 25
Conferences	RADR 26
Documents – Form and Language	RADR 27 & 28
Documents – Documents or submissions not previously provided	RADR 29
Documents – Providing a document	RADR 30 - 32
Documents – Application if unable to provide a document	RADR 33
Documents – Proof document was provided	RADR 34
Documents – When document received by RAD or other recipient	RADR 35
Applications (application, response, reply)	RADR 36 to 39
Joining or separating appeals	RADR 40 & 41
Proceeding conducted in public (requires application)	RADR 42
Assignment of three member panel & notice to UNHCR	RADR 43(1)
Providing documents to UNHCR / UNHCR notice to RAD regarding intention to provide written submissions	RADR 43(2) & (3)
Rules applicable to UNHCR and interested persons	RADR 44 to 46
Withdrawal	RADR 47
Reinstating a withdrawn appeal	RADR 48
Reopening an appeal	RADR 49
Decisions	RADR 50 & 51
<b>General provisions concerning RAD powers</b>	
No applicable rule	RADR 52
Powers of RAD	RADR 53
Failure to follow rules	RADR 54
<b>Rules applicable to RAD appeals for which a hearing is held</b>	
Fixing a date for a hearing	RADR 55
Notice to appear	RADR 56
Conduct of a hearing	RADR 57
Person who is the subject of an appeal in custody	RADR 58
Interpreters	RADR 59
Observers	RADR 60
Witnesses	RADR 61 to 65
Changing the location of a hearing	RADR 66
Changing the date or time of a hearing	RADR 67
Abandonment	RADR 68



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**Note:** Hearings officers must be familiar with the IRB Rules, applicable reference documents, the Chairperson's Guidelines, and the practice notices that are available on the IRB Web site.

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## **6. Ministerial responsibility**

On July 1, 2015 the Governor General in Council made an order outlining the ministerial responsibilities as they pertain to A110 and A171 (RAD appeals and proceedings) in Statutory Instrument/2015-52. The Minister of Public Safety and Emergency Preparedness (Minister of PS) and the Minister of Immigration, Refugees and Citizenship Canada (Minister of IRCC) (then the Minister of Citizenship and Immigration) were both given the ministerial responsibilities under A110 and A171 however the Minister of PS was only given this responsibility with respect to those matters for which he or she is responsible under the Act.

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## **7. CBSA hearings officer role and responsibilities**

### **7.1. Delegated ministerial responsibility**

In January 2015 the Minister of IRCC (then Minister of Citizenship and Immigration) delegated the ministerial responsibilities pertaining to A110 and A171 specifically A110(1), A110(1.1), A110(3), A171(a), A171(a.1), A171(a.4) and A171(a.5) to, *inter alia*, CBSA hearings officers. For more information on the other positions delegated ministerial responsibilities pertaining to the RAD please refer to the most recent instrument of delegation.

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### **7.2. Professional conduct as Minister's delegate**

In the capacity as the Minister's delegate, a hearings officer

- (a) is a firm advocate of the Minister's position;
- (b) should always be aware that he/she is speaking and acting on behalf of the Minister, and that the positions and actions taken should reflect IRCC and CBSA departmental policy;
- (c) should always be professional and respect decorum, as well as maintain professionalism in his/her telephone manner, written correspondence, conduct at hearings and all interactions with the public;
- (d) should exhibit professionalism by adequately preparing for cases;
- (e) should treat all persons with whom he/she interacts with dignity and respect.

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### **7.3. Consultation/Concurrence from Litigation Management**

A CBSA hearings officer must seek approval from his/her manager prior to filing and perfecting appeals on behalf of the Minister.

For some cases, litigation management (CBSA or IRCC) at national headquarters must be consulted or concur with the appeal filed to the RAD (see **Appendix 1**).

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**Note:** When consulting with or requesting concurrence from litigation management via email, the Hearings manager should copy the CBSA Programs and Operations units responsible for hearings at national headquarters via [Hearings-Audiences-Programs@cbsa-asfc.gc.ca](mailto:Hearings-Audiences-Programs@cbsa-asfc.gc.ca)

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## **8. The Refugee Appeal Division**

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### **8.1. Who *can* appeal to the RAD & grounds of appeal**

A person or the Minister may file and perfect an appeal against an RPD decision which has allowed or rejected the person's claim for refugee protection provided the enumerated restrictions do not apply (see section below: When you *cannot* appeal to the RAD).

An appeal may be brought to the RAD, when restrictions do not apply, on the grounds that the RPD committed an error of law, of fact or of mixed law and fact. [A110(1)]

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### **8.2. Deadlines to file and perfect an appeal**

A110(2.1) requires that an appeal must be filed and perfected within the time limits set out in the Regulations. Pursuant to A111.1(1)(d), regulations may include provisions respecting time limits for the filing and perfecting of an appeal under A110(2.1).

Pursuant to R159.91(1)(a), the time limit for a person or the Minister to file an appeal to the RAD against a decision of the RPD is 15 days after the day on which the person or the Minister receives written reasons for the decision.

Pursuant to R159.91(1)(b), the time limit for a person or the Minister to perfect an appeal is 30 days after the day on which the person or the Minister receives written reasons for the decision.

R159.91(2) provides that if the appeal cannot be filed within the time limit set out in R159.91(1)(a) or perfected within the time limit set out in R159.91(1)(b), the RAD may, for reasons of fairness and natural justice, extend each of those time limits by the number of days that is necessary in the circumstances.

RADR 35(3) provides that when a time limit for providing a document ends on a day that is not a working day, the time limit is extended to the next working day. RADR 1 defines "working day" as not including Saturdays, Sundays or other days on which the IRB offices are closed.

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### **8.3. When you *cannot* appeal to the RAD**

No appeal to the RAD may be made in the following situations:

- a decision of the RPD in respect of a claim made by a designated foreign national [A110(2)(a)];
- a determination by the RPD that a claim was withdrawn or abandoned [A110(2)(b)];
- a decision of the RPD rejecting a claim that states that the claim has no credible basis or is manifestly unfounded [A110(2)(c)];
- a decision of the RPD in respect of a claim that was referred based on an exception to the Safe Third Country Agreement [A110(2)(d)];
- a decision of the RPD in respect of the Minister's application for a determination that refugee protection has ceased [A110(2)(e)];
- a decision of the RPD in respect of the Minister's application to vacate a decision to allow a claim for refugee protection [A110(2)(f)];
- a notice provided by an officer under A104;
- the claim has been deemed rejected because of an order of surrender under the *Extradition Act* [A105];
- a decision of the RPD following a hearing that had been commenced by the CRDD [A194];

- a decision of the CRDD made before December 15, 2012 [A195];
- a decision of the RPD in respect of a claim that was referred before August 15, 2012 [Related Provision – 2010, c.8, s.36, as amended by 2012, c.17, s.68] and if any such decision is set aside by the Federal Court in a judicial review, the redetermination of that decision by a member of the RPD appointed under A169.1 [Related Provision 2010, c.8, s.37, as amended by 2012, c.17, s.68]; and
- a decision of the RPD in respect of a claim that was referred after August 14, 2012 but before December 15, 2012, if the decision takes effect after June 26, 2013 [s.167 of the Economic Action Plan Act 2013, Part I] **and** any such decision is set aside in judicial review, the redetermination of that decision by a member of the RPD appointed under A169.1 [s.168 of the BIA].

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**Note:** Where a decision of the RPD may be appealed to the RAD, this right of appeal must be exhausted before making an application to the Federal Court for leave to seek judicial review.

**Note:** The RAD does not have jurisdiction to reopen an appeal it has decided and with respect to which the Federal Court has made a final decision [A171.1].

**Note:** On July 23<sup>rd</sup>, 2015 the Federal Court (2015 FC 892) found the restriction under A110(2)(d.1) unconstitutional. Since that date claimants from DCO countries have had a right to appeal to the RAD.

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#### 8.4. Role of the RAD and Appellant's onus

According to the Federal Court of Appeal (FCA) in *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 (*Huruglica*) the RAD is a safety net intended to catch all mistakes made by the RPD. Its role, therefore, is to correct where the RPD is wrong in law, in fact or in fact and law.

The FCA stated that the RAD is first to carefully consider the RPD decision, then carry out its own analysis of the record to determine whether, as submitted by the appellant, the RPD erred, and then to provide a final determination – confirm, set aside and substitute its own determination, or refer the matter back to the RPD.

The FCA determined that with respect to questions of law and findings of fact or mixed fact and law that do not raise an issue of credibility of oral evidence the RAD is to review the RPD decision by applying a standard of correctness. The FCA did not speak to which standard should apply to findings of fact or mixed fact and law that do raise an issue of credibility of oral evidence.

In a decision that predates *Huruglica*, the Federal Court in *Dhillon v. Canada (Citizenship and Immigration)*, 2015 FC 321 (*Dhillon*) stated that the RAD's authority to substitute its decision with that of the RPD does not entail a duty to speculate as to what might have been a better approach to a failed refugee claimant's appeal. Nor may the RAD find that the claim should have been accepted based on risks that were not raised by the claimant in the first place. It is the appellant's responsibility, not the RAD's, to establish that the RPD erred in a way that justifies the intervention of the RAD. It is not the RAD's function to supplement the weaknesses of an appeal before it or to come up with ideas that might assist appellants in succeeding with their appeal.

In a decision that postdates *Huruglica* the Federal Court in *Murugesu v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 819 (*Murugesu*) followed *Dhillon* and the *obiter* comments made by Justice Gleeson in *Ghuri v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 548 holding that appellants before the RAD who fail to specify where and how the RPD erred do so at their peril. The Federal Court noted that RADR 3(3)(g) places the onus on the appellant to identify in their Memorandum the errors that are the grounds of the appeal and the location of the errors in the RPD's decision or in the audio or other electronic recording of the RPD hearing.

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**8.5. Composition of panel**

Appeals to the RAD are reviewed and decided by a single member unless the Chairperson is of the opinion that a panel of three members should be constituted [A163]. If the Chairperson orders a proceeding to be conducted by a three member panel, the RAD must without delay notify the parties in writing. This notice includes the Minister (even if the Minister has not intervened in the appeal) and the United Nations High Commissioner for Refugees (UNHCR) [RADR 43].

A decision made by a three-member panel is binding on the RPD and on single member panels of the RAD [A171(c)]. This will create consistency of decisions and contribute to a robust refugee protection adjudicative strategy.

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**8.6. Powers and authorities of RAD members**

Members of the RAD have the powers and authority of a commissioner appointed under part I of the *Inquiries Act*, and may do any other thing they consider necessary to provide a full and proper hearing [A165].

The powers and authority of a commissioner appointed under Part 1 of the *Inquiries Act* include the power of summoning before them witnesses, and if requiring the witness to give evidence, orally or in writing under oath or, if entitled, by affirmation under solemn declaration, and to produce such documents and things as the commissioner deems requisite to the full investigation of the matters into which the commissioner is appointed to examine (see section 4, *Inquiries Act*). The commissioner has the same power to enforce the attendance of a witness and to compel the witness to give evidence as is vested in any court of record in civil cases (see section 5, *Inquiries Act*).

The RAD member is not bound by any legal or technical rules of evidence [A171(a.2)] and may receive and base a decision on evidence that is adduced in the proceeding and considered credible or trustworthy in the circumstances [A171(a.3)].

The RAD member may take notice of any facts that may be judicially noticed and of any other generally recognized facts and any information or opinion that is within his or her specialized knowledge [A171(b)]. Before using any information or opinion that is within the RAD member's specialized knowledge the RAD member must notify the parties and give them an opportunity to make representations on the reliability and use of the information or opinion and provide evidence in support of their representations [RADR 24].

In the absence of a provision in the RADR dealing with a matter raised during the proceedings, the RAD member may do whatever is necessary to deal with the matter [RADR 52].

The RAD member may, after giving the parties notice and an opportunity to object, (a) act on his or her own initiative, without a party having to make an application or request to the RAD; (b) change a requirement of a rule; (c) excuse a person from a requirement of a rule; and (d) extend a time limit, before or after the time limit has expired, or shorten it if the time limit has not expired [RADR 53].

Failure to follow any requirement in the RADR does not make the proceedings invalid unless proceedings are declared invalid by the RAD member [RADR 54].

The RAD, similar to all divisions of the IRB, has the sole and exclusive jurisdiction in respect of proceedings brought before it under the IRPA to hear and determine all questions of law and fact, including questions of jurisdiction [A162(1)].

The RAD, similar to all divisions of the IRB, shall deal with all proceedings before it as informally and quickly as the circumstances and the considerations of fairness and natural justice permit [A162(2)].

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**8.7. Paper-based appeals**

Pursuant to A110(3), subject to the provisions set out in A110(3.1), A110(4) and A110(6) the RAD must proceed without a hearing on the basis of the record of the proceedings of

the RPD and may accept any documentary evidence and written submissions from the Minister and the person who is the subject of the appeal (and when the matter is heard by a panel of three members then also written submissions by the UNHCR representative and any other person described in the RADR).

A110(4) restricts the evidence which the person who is the subject of the appeal may present. He or she is only allowed to present evidence that arose after the rejection of his/her claim, that was not reasonably available or that he/she could not reasonably have been expected in the circumstances to have presented at the time of the rejection.

A110(4) does not apply to the Minister.

The FCA in *Minister of Citizenship & Immigration v. Singh*, 2016 FCA 96 (*Singh*) stated that the explicit provisions in A110(4) are inescapable and leave no room for discretion on the part of the RAD. Hence, evidence submitted under A110(3) by an appellant who is the subject of the appeal must meet one of the three categories set out under A110(4).

Further, the FCA in *Singh* stated that the *Raza* factors (credibility, relevance, newness and materiality) (see *Raza v. Minister of Citizenship & Immigration*, 2007 FCA 385) apply to the assessment under A110(4) as they do in the context of Pre-Removal Risk Assessments with an adaptation of the materiality criterion – the new evidence does not need to be determinative in and of itself so long as it may have an impact on the RAD's overall assessment of the RPD's decision.

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**Note:** A110(5) states that A110(4) does not apply in respect of evidence that is presented in response to evidence presented by the Minister.

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RADR 3(3)(c) provides that the person who is the subject of the appeal may file any document that the RPD refused to accept as evidence, during or after the hearing, if he or she wants to rely on the documents in his or her appeal. RADR 10(3)(c) provides that the person who is the subject of an appeal in response to a Minister's appeal may provide any documentary evidence that he or she wants to rely on in the appeal.

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#### **8.8. RPD Record**

The RAD must without delay provide a copy of the notice of appeal to the RPD after the appeal is perfected [RADR 21(1)]. The RPD must prepare a record and provide it to the RAD no later than 10 days after the day on which the RPD receives the notice of appeal [RADR 21(2)].

RADR 21(3) sets out what must be included in the RPD record:

- (a) the notice of decision and written reasons for the decision that is being appealed;
- (b) the Basis of Claim Form as defined in the Refugee Protection Division Rules and any changes or additions to it;
- (c) all documentary evidence that the RPD accepted as evidence, during or after the hearing;
- (d) any written representations made during or after the hearing but before the decision being appealed was made; and
- (e) any audio or other electronic recording of the hearing.

If the Minister did not take part in the proceedings relating to the decision being appealed, the RAD must provide a copy of the RPD record to the Minister as soon as the RAD receives it [RADR 21(4)].

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**Note:** The IRB interprets "take part in the proceedings" to mean intervention in any form (in person or in writing only).

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#### **8.9. Holding a hearing**

Pursuant to A110(6), the RAD may hold a hearing if, in its opinion, documentary evidence disclosed at the RAD (beyond the RPD record) (a) raises a serious issue with respect to the credibility of the person who is the subject of the appeal, (b) is central to the decision

with respect to the refugee protection claim, and (c) if accepted, would justify allowing or rejecting the refugee protection claim.

The FCA in *Singh* made it clear that the RAD's discretion on whether to hold a hearing is limited in that these three requirements in A110(6) must be present.

According to A171(a) the RAD must give notice of any hearing to both the Minister and the person who is the subject of the appeal. This notice must be in writing and provide the date, time and location fixed for the hearing and the issues that will be raised at the hearing [RADR 56(1)].

The date fixed for the hearing must not be earlier than 10 days after the day which the person who is the subject of the appeal and the Minister receive the notice, unless they consent to an earlier date [RADR 56(2)].

A hearing is restricted to matters relating to the issues provided with the notice to appear unless the RAD considers that other issues have been raised by statements made by the person who is the subject of an appeal or by a witness during the hearing [RADR 57(1)].

A171(a.1) provides that when a hearing is held the RAD must give the person who is the subject of the appeal and the Minister the opportunity to present evidence, question witnesses and make submissions.

When a hearing is held, unless the RAD orders otherwise, any witness, including the person who is the subject of an appeal, will be questioned first by the appellant, then by any other party, then by the appellant in reply, and then by the RAD [RADR 57(2)].

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**Note:** When the Minister intervenes in an appeal and is seeking exclusion under article 1F or 1E of the Refugee Convention (not previously dealt with at the RPD), the Minister's counsel should make an application to the RAD to allow the Minister's counsel to start the questioning on exclusion followed by the appellant's counsel and finishing with the Minister's counsel in reply. This will allow the exclusion issue to be fully canvassed by the Minister who has the onus of establishing exclusion.

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The RAD may limit the questioning of witnesses, including the person who is the subject of an appeal, taking into account the nature and complexity of the issues and the relevance of the questions [RADR 57(3)].

Where a hearing is held, the RAD may, in its discretion, conduct the hearing in the presence of, or by means of live telecommunication with, the person who is the subject of the appeal [A164].

The RAD may order a person who holds the person who is the subject of the appeal in custody to bring the person to a proceeding at a location specified by the RAD [RADR 58].

Representations must be made orally at the end of the hearing unless the RAD orders otherwise [RADR 57(4)]. After all the evidence has been heard, the RAD must set time limits for representations, taking into account the complexity of the issues and the amount of relevant evidence heard and indicate what issues need to be addressed in the representations [RADR 57(5)].

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#### **8.10. Decisions at RAD**

The RAD has the authority to (a) confirm the determination of the RPD, (b) set aside the determination of the RPD and substitute a determination that, in its opinion, should have been made; or (c) refer the matter to the RPD for re-determination, giving direction to the RPD that it considers appropriate [A111].

Other than an interlocutory decision, a decision made by the RAD must be rendered in writing [A169(c)] and reasons for the decision must be given [A169(b)].

When the RAD makes a decision, other than an interlocutory decision, the RAD must provide in writing a notice of decision to the person who is the subject of the appeal, to the Minister and the RPD. It must also provide a notice of the decision to the UNHCR and

to any interested person, if they provided written submissions in the appeal [RADR 50(1)].

The RAD must provide written reasons for the decision, together with the notice of decision if a hearing was not held or was held and the decision and reasons were not given orally at the hearing. [RADR 50(2)].

If the person who is the subject of the appeal or the Minister request written reasons for a decision within 10 days of notification of the decision, or in the circumstances set out in the RADR, the RAD must provide written reasons [A169(e)]. The RADR require that a request for written reasons for a decision must be made in writing [RADR 50(3)].

Other than an interlocutory decision, the decision takes effect in accordance with the RADR [A169(a)]. A decision, other than an interlocutory decision, made by a single RAD member takes effect (a) if made in writing, when the RAD member signs and dates the reasons for the decision; and (b) if given orally at a hearing, when the RAD member states the decision and gives the reasons [RADR 51(1)].

A decision, other than an interlocutory decision, made by a panel of three RAD members takes effect (a) if made in writing, when all three RAD members sign and date their reasons for the decision; and (b) if given orally at a hearing, when all three RAD members state their decision and give their reasons [RADR 51(2)].

Unless a hearing is held the RAD must make a decision within the time limits set out in the regulations [A110(3.1)]. IRPR 159.92(1) provides that, except where a hearing is held under A110(6), the time limit for the RAD to make a decision on an appeal is 90 days after the day on which the appeal is perfected. If it is not possible for the RAD to render its decision within 90 days after the appeal is perfected, the decision must be made as soon as feasible after that time limit [IRPR 159.92(2)].

Where an appeal is brought by the person who is the subject of the appeal, and unless a hearing is held, the RAD may, without further notice to the appellant and the Minister, decide an appeal on the basis of the materials provided (a) if a period of 15 days has passed since the day on which the Minister received the appellant's record, or the time limit for perfecting the appeal set out in the IRPR has expired; or (b) if the appellant's reply record has been provided or the time for providing it has expired [RADR 7].

Where an appeal is brought by the Minister, unless a hearing is held, the RAD may, without further notice to the parties, decide an appeal on the basis of the materials provided (a) if a period of 15 days has passed since the day on which the Minister received the respondent's record, or the time limit for providing the respondent's record has expired; or (b) if the Minister's reply has been provided [RADR 13].

The RPD does not have jurisdiction to reopen, on any ground (including failure to observe a principle of natural justice), a claim for refugee protection, an application for protection or an application for cessation or vacation, in respect of which the RAD or the Federal Court, as the case may be, has made a final determination [A170.2].

At any time before the Federal Court has made a final determination in respect of an appeal that has been decided or declared abandoned, the appellant may make an application to the RAD to reopen the appeal [RADR 49]. RADR 49(2) through to 49(9) set out the rules in respect of an application to reopen an appeal.

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#### **8.11. Sending a matter back to the RPD for re-determination**

After considering the appeal, the RAD may refer the matter to the RPD for re-determination, giving the direction to the RPD that it considers appropriate [A111(1)(c)].

In order for the RAD to send a matter back to the RPD for re-determination the RAD must be of the opinion that (a) the RPD decision is wrong in law, in fact or in mixed law and fact, and (b) the RAD member cannot make a decision to either confirm the RPD determination or to set aside the RPD determination and substitute his/her own decision without hearing evidence that was presented to the RPD [A111(2)].

The FCA in *Huruglica* noted that this possibility acknowledges the fact that in some cases where oral testimony is critical or determinative in the opinion of the RAD, the RAD may not be in a position to confirm or substitute its own determination to that of the RPD. The FCA stated that there may be cases where the RPD enjoys a meaningful advantage over the RAD in making findings of fact or mixed fact and law – because they require an assessment of the credibility or weight to be given to the oral evidence it hears and that the RAD may exercise restraint in substituting its own decision. The FCA stated that in each case the RAD ought to determine whether the RPD truly benefited from an advantageous position, and if so, whether the RAD can nevertheless make a final decision in respect of the refugee claim.

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## 9. Policy

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### 9.1. Priorities established by IRCC that may trigger an appeal from the Minister

The following cases should be reviewed and considered for appeal to the RAD:

- Cases that were subject to an intervention at the RPD.
- Cases where the final outcome may establish a precedent that may impact the integrity of the program.
- Cases that may affect the assessment of subsequent refugee claims at the RPD and RAD. (For example, the RPD gives protection to a French citizen or the RPD creates a new particular social group in relation to the Convention Refugee definition).
- Cases that involve an oral hearing because these cases would involve new evidence and may raise credibility concerns.
- Cases that will be assessed by a three member panel of the RAD as a decision of a three member panel will have precedential value for the RPD and for all decisions of the RAD.
- Cases where the United Nations High Commissioner for Refugees (UNHCR) or a third party has notified the parties of the intention to provide written submissions.
- Cases where new information is received after the RPD decision.
- Cases where claimant has made an application for a re-opening of a recent negative decision that has been granted by the respective Division, either under RPD Rule 62 or RAD Rule 49.
- Cases selected at random.

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### 9.2. Distribution of workload between CBSA and IRCC

With the introduction of the Reviews & Interventions (R&I) pilot project, IRCC Senior Immigration Officers (SIO) are responsible for appeals and interventions at RAD for cases involving (i) credibility, (ii) program integrity and (iii) exclusion under article 1 section E of the *United Nations Convention Relating to the Status of Refugees* (Refugee Convention).

CBSA hearings officers are responsible for appeals and interventions at RAD for cases involving (i) possible exclusion under article 1, section F of the Refugee Convention, (ii) where the claimant is or was in detention in Canada, (iii) where the claimant is a designated foreign national, (iv) in which a constitutional question is raised, and (v) a combination of SIO responsibilities as well as CBSA hearings officer responsibilities.

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**Note:** Where a case is determined to be a hybrid case (having SIO and CBSA hearings officer responsibilities) and the hearings officer elects not to pursue exclusion under article 1F of the Refugee Convention the hearings officer is required, in accordance with the commitment



made by CBSA to IRCC, to consider intervention with respect to credibility, program integrity and/or article 1E and where it is warranted to pursue the same.

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## **10. Other Procedural Matters before the RAD**

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### **10.1. Parties**

RADR 1 defines a party to mean (a) in the case of an appeal by the person who is the subject of an appeal, the person and, if the Minister intervenes in the appeal, the Minister, and (b) in the case of an appeal by the Minister, the Minister and the person who is the subject of the appeal.

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### **10.2. Other Participants**

The UNHCR or other interested persons may participate in appeals that are held before three member RAD panels [RADR 45 & 46].

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### **10.3. UNHCR participation**

The UNHCR must notify the RAD in writing of its intention to provide written submissions in an appeal conducted by a three-member panel [RADR 45(1)]. The UNHCR must provide its written submissions within 10 days after the day of providing its notice of intention [RADR 45(3)]. The requirements for UNHCR written submissions are set out in RADR 45(4) & 45(5).

The RAD must provide a copy of the UNHCR's written submissions to the person who is the subject of the appeal and to the Minister without delay. [RADR 45(6)]

RADR 45(7) to 45(12) set out the requirements for providing a written response to the UNHCR's written submissions. A written response must be received by its recipients no later than 7 days after the day on which the person who is the subject of the appeal or the Minister, as the case may be, receives the UNHCR's written submissions [RADR 45(12)].

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### **10.4. Application by an interested person to participate**

Any person, other than the UNHCR, may make an application to the RAD to be allowed to participate in an appeal conducted by a three-member panel [RADR 46(1)]. RADR 46(2) and 46(3) set out the requirements for the application.

RADR 46(4) to 46(7) set out the requirements for a response to the application. The response must be received no later than 10 days after the day on which the application is received [RADR 46(7)].

RADR 46(8) and 46(9) provide requirements for the notification of the decision on the application and documents the RAD is required to provide the interested person.

RADR 46(10) to 46(13) provide requirements for the interested person's written submissions. RADR 46(14) to 46(19) set out the requirements for the response to the written submissions. The response must be received no later than 7 days after the day on which the interested person's written submissions are received [RADR 46(19)].

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### **10.5. Language of the appeal**

A person who is the subject of an appeal must choose English or French as the language of the appeal. The person must indicate the language in the notice of appeal if they are the appellant or in the notice of intent to respond if they are the respondent [RADR 22(1)].

When the Minister is the appellant the language of the appeal is the language that was chosen by the subject of the appeal in the RPD proceedings relating to the decision that is being appealed [RADR 22(2)].

The person who is the subject of the appeal may change the language by providing notice to the RAD and the Minister in writing without delay and if a date has been fixed for a hearing then no later than 20 days before that date [RADR 22(3)].

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**10.6. Proceedings in the absence of the public**

Proceedings before the RAD must be held in the absence of the public [A166(c)].

A person may make a written application to the RAD to have the proceeding conducted in public in accordance with RADR 42(2) to 42(5). For the purposes of RADR 42 the Minister is considered to be a party to the proceeding even if the Minister has not yet intervened in the appeal. The content of the application is set out under RADR 42(4).

If a hearing date has been fixed, an oral application for a proceeding to be held in public must not be allowed unless the person, with reasonable effort, could not have made a written application before that date [RADR42(3)].

The requirements for a response to the application are set out in RADR 46(6) to 46(9). The content of a response to the application is set out in RADR 42(6). If the Minister responds to a written application, the response must be accompanied by a notice of intervention in accordance with RADR 4(2), if one was not previously provided [RADR 42(7)]. According to RADR 42(12) the RAD must specify the time limit within which a response is to be provided.

Pursuant to RADR 42(13), the RAD may take any measure it considers necessary to ensure the confidentiality of the proceeding in respect of the application. Accordingly, the RAD may provide a summary of the response instead of a copy to the applicant [RADR 42(9) and 49(13)]. RADR 42(14) sets out requirements where the RAD takes certain measures to ensure the confidentiality of the proceeding.

RADR 42(10) to 42(12) set out requirements for replying to the response. RADR 42(15) requires the RAD to notify the applicant and the parties of its decision on the application and provide reasons for the decision.

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**10.7. Right to counsel**

The Minister and the person who is the subject of the appeal may, at their own expense, be represented by legal or other counsel [A167]. The RADR includes provisions regarding notice requirements for when counsel is retained after providing a notice of appeal or notice of intent to respond, as the case may be, by the person who is the subject of the appeal [RADR 16(1)], the effect of limitations on counsel's retainer [RADR 18(2)], changes to counsel's contact information [RADR 16(2) and 16(3)], and removal of counsel of record [RADR 19 and 20].

RADR 18(1) states that counsel becomes counsel of record for the person who is the subject of the appeal as soon as he/she provides on behalf of the person who is the subject of the appeal a notice of appeal or a notice of intent to respond, as the case may be, or as soon as a person becomes counsel after the person provided notice.

RADR 31(4) states that a document to be provided to a person must be provided to the person's counsel of record if the person has counsel of record. If the person does not have counsel of record the document must be provided to the person.

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**10.8. Designated representative**

The RAD shall designate a person to represent any person who is under 18 years of age or is unable (in the opinion of the RAD) to appreciate the nature of the proceedings [A167(2)].

If the RPD designated a representative for the person who is the subject of the appeal in the RPD proceeding relating to the decision being appealed, the representative is deemed to have been designated by the RAD unless the RAD orders otherwise [RADR 23(1)].

If the RPD did not designate a representative for the person who is the subject of the appeal and counsel for a party believes that the RAD should designate a representative because the person is under 18 years of age or is unable to appreciate the nature of the proceedings, counsel must without delay notify the RAD in writing [RADR23(2)]. The duty of counsel to notify does not apply in the case of a person under 18 years of age whose

appeal is joined with the appeal of their parent or legal guardian (who is over the age of 18) [RADR23(3)]. RADR 23(4) sets out the requirements for the notice to designate a representative.

RADR 23(5) to 23(11) set out rules related to the designation of a representative, the length of the designation, termination of the delegation and responsibilities of the representative.

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### **10.9. Interpreters**

If the person who is the subject of an appeal needs an interpreter, he or she must indicate the language and dialect, if any, in their appellant's record or respondent's record (depending on the position they take in the appeal) [RADR 59(1)]. A person who is the subject of an appeal may change the language and dialect, if any, or if they had not indicated that an interpreter was needed, they may do so by notifying the RAD in writing and indicating the language and dialect, if any. The notice must be received no later than 20 days before the date fixed for the hearing [RADR 59(2)]. If any party's witness needs an interpreter for a hearing, the party must notify the RAD in writing and specify the language and dialect, if any. The notice must be received no later than 20 days before the date fixed for the hearing [RADR 59(3)]. The interpreter must take an oath or make a solemn affirmation to interpret accurately [RADR 59(4)].

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### **10.10. Observers**

An application to have a proceeding conducted in public under RADR 42 is not necessary in the following cases:

- (a) The observer is the UNHCR or a member of the staff of the IRB; or
- (b) The person who is the subject of an appeal consents to or requests the presence of an observer (other than a representative of the press or other media of communication) at the proceeding [RADR 60(1)].

The RAD must allow the attendance of an observer unless, in the opinion of the RAD, the observer's attendance is likely to impede the proceeding [RADR 60(2)].

The RAD may take any measure it considers necessary to ensure the confidentiality of the proceeding despite the presence of an observer [RADR 60(3)].

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### **10.11. Witnesses**

If a party wants to call a witness, the party must provide witness information in writing to any other party and to the RAD [RADR 61(1)]. The witness information provided to the RAD must be accompanied by proof that it was provided to any other party [RADR 61(2)].

The documents that are to be provided in relation to witness information must be received by the recipients no later than 20 days before the date fixed for the hearing [RADR 61(3)]. If the witness information is not provided, the witness must not testify at the hearing unless the RAD allows them to testify [RADR 61(4)].

According to RADR 61(1), the party must provide the following witness information:

- (a) the witness's contact information;
- (b) a brief statement of the purpose and substance of the witness's testimony or, in the case of an expert witness, the expert witness's brief signed summary of the testimony to be given;
- (c) the time needed for the witness's testimony;
- (d) the party's relationship to the witness;
- (e) in the case of an expert witness, a description of the expert witness's qualifications; and
- (f) whether the party wants the witness to testify by means of live telecommunication.

According to RADR 61(5) in deciding whether to allow a witness to testify, the RAD must consider any relevant factors including (a) the relevance and probative value of the proposed testimony and (b) the reason why the witness information was not provided.

A party who wants the RAD to order a person to testify at a hearing must make a request to the RAD for a summons (either orally or in writing) [RADR 62(1)].

RADR 62(2) sets out that the RAD must consider any relevant factors in deciding whether to issue a summons including (a) the necessity of the testimony to a full and proper hearing; (b) the person's ability to give that testimony; and (c) whether the person has agreed to be summoned as a witness.

RADR 62(3), 63 and 64 set out requirements for using a summons, cancelling a summons and requesting the issuance of an arrest warrant for a person who does not obey the summons.

RADR 65 provides that if the RAD excludes a witness from a hearing room, no person may communicate to the witness any evidence given while the witness was excluded unless allowed to do so by the RAD or until the witness has finished testifying.

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#### **10.12. Conferences**

The RAD may require the parties to participate at a conference to discuss issues, relevant facts and any other matter in order to make the appeal more fair and more efficient [RADR 26(1)]. At or before the conference, the RAD may require the parties to give any information or provide any document [RADR 26(2)]. The RAD must make a written record of any decision and agreements made at the conference [RADR 26(3)].

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#### **10.13. Conference to fix a date**

The RAD may require the parties to participate in a scheduling conference or otherwise give information to help the RAD fix a date for a hearing [RADR 55].

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#### **10.14. Joining or separating appeals**

The RAD must join any appeal of decisions on claims that were joined at the time that the RPD decided the claims [RADR 40]. In addition, a party may make an application to the RAD to join or separate appeals [RADR 41(1) & (2)]. The requirements for the application are set out in RADR 41(3) and 41(4). The RAD must consider any relevant factors in deciding the application to join or separate appeals including whether (a) the appeals involve similar questions of fact or law; (b) allowing the application would promote the efficient administration of the RAD's work; and (c) allowing the application would likely cause an injustice [RADR 41(5)].

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#### **10.15. Notice of Constitutional Question**

A party who wants to challenge the constitutional validity, applicability or operability of a legislative provision must complete a notice of constitutional question [RADR 25(1)]. The documents provided under RADR 25 must be received by their recipients at the same time as the RAD receives the appellant's record, respondent's record or the reply record, as the case may be [RADR 25(4)]. The RAD must not make a decision on the constitutional question until at least 10 days after the day on which it receives the notice of constitutional question [RADR 25(5)].

According to RADR 25(2) the notice must be completed as set out in Form 69 of the *Federal Court Rules* or any other form that includes:

- (a) the party's name;
- (b) the RAD file number;
- (c) the specific legislative provision that is being challenged;
- (d) the material facts relied on to support the constitutional challenge; and

- (e) a summary of the legal argument to be made in support of the constitutional challenge

According to RADR 25(3) the party must provide:

- (a) a copy of the notice to the Attorney General of Canada and the attorney general of each province of Canada, in accordance with section 57 of the *Federal Court Act*;
- (b) a copy of the notice to the Minister even if the Minister has not yet intervened in the appeal;
- (c) a copy of the notice to the UNHCR, if the UNHCR has provided notice of its intention to provide written submissions and any interested person (defined as having had their application to participate in the appeal granted [RADR 1]);
- (d) the original of the notice to the RAD along with proof that copies were provided as set out above.

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#### **10.16. Abandoned proceeding**

The RAD may determine that a proceeding before it has been abandoned if the RAD is of the opinion that the applicant is in default in the proceedings, including by failing to appear for a hearing, to provide information required by the RAD or to communicate with the RAD after being requested to do so [A168(1)]. In determining whether an appeal has been abandoned after a hearing date has been fixed, the RAD must give the appellant an opportunity to explain why the appeal should not be declared abandoned in accordance with RADR 68. RADR 68(2) sets out the factors the RAD must consider in deciding if the appeal should be declared abandoned. RADR 68(3) to (5) set out the requirements for providing medical reasons. RADR 68(6) provides that if the RAD decides not to declare the appeal abandoned, it must start or continue the proceedings without delay.

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#### **10.17. Withdrawal of an appeal**

The RAD may refuse to allow an applicant to withdraw from a proceeding if it is of the opinion that the withdrawal would be an abuse of process under its rules [A168(2)]. A withdrawal of an appeal is an abuse of process if it would likely have a negative effect on the RAD's integrity [RADR 47(1)].

If the requirements set out in RADR 7 or 13, as the case may be, have not been met then withdrawal is not an abuse of process [RADR 47(1)] and can be done by notice in writing to the RAD [RADR 47(2)]. Use *Template notice of withdrawal of appeal RADR 47(2).doc*.

If the requirements in RADR 7 or 13, as the case may be, have been met then the applicant must make an application to the RAD in accordance with RADR 37 [RADR 47(3)]. Use *Template application to withdraw an appeal RADR 47(3).doc*.

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#### **10.18. Reinstate a withdrawn appeal**

An appellant may apply to the RAD to reinstate a withdrawn appeal [RADR 48(1)]. RADR 48(2) and 48(3) set out the requirements for the application. RADR 48(4) to 48(6) set out the factors the RAD must consider in deciding the application (including that the application must not be allowed unless it establishes that there was a failure to observe a principle of natural justice or it is otherwise in the interests of justice to allow the application).

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#### **10.19. Communicating with the RAD**

All communications with the RAD must be directed to the registry office specified by the RAD [RADR 14].

Contact information for RAD registries

##### **Eastern Region**

Montréal  
Guy-Favreau Complex  
200 René-Lévesque Blvd. West  
East Tower, Room 102  
Montréal, QUE H2Z 1X4  
Telephone: 514-283-7733 or 1-866-626-8719  
Fax : 514-496-6629

**Central Region**

Toronto  
74 Victoria St., Suite 400  
Toronto, ON M5C 3C7  
Telephone: 416-954-1000 or 1-866-790-0581  
Fax: 416-496-1511

**Western Region**

Vancouver  
300 West Georgia St., Suite 1600  
Vancouver, BC V6B 6C9  
Telephone: 604-666-5946 or 1-866-787-7472  
Fax: 604-666-9870

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**10.20. Change of contact information**

If the contact information of a person who is the subject of an appeal changes, such person must without delay provide the changes in writing to the RAD and to the Minister [RADR 15].

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**10.21. Documents**

RADR 27 and 28 set out the requirements for the form and language of documents. RADR 29(1) to (4) set out the rules for documents or written submissions not previously provided by the person who is the subject of the appeal.

RADR 30 to 35 set out the rules for providing a document. RADR 31 provides requirements for providing documents to the RAD, RPD, the Minister and to any other person. RADR 32 provides that a document may be provided by hand, regular or registered mail, courier, fax (if the document is no more than 20 pages, unless the recipient consents to receiving more than 20 pages), and by email or other electronic means if the RAD allows. If the party is unable to provide a document in a way required by RADR 32 a party may apply to the RAD to be allowed to provide the document in another way or to be excused from providing the document [RADR 33].

RADR 35(1) sets out that a document provided to the RAD or the RPD is considered to be received on the day on which the document is date-stamped by that division. RADR 35(2) sets out that a document provided by regular mail other than to the RAD or to the RPD is considered to be received seven days after the day on which it was mailed. If the seventh day is not a working day, the document is considered to be received on the next working day.

RADR 35(3) provides that when the time limit for providing a document ends on a day that is not a working day, the time limit is extended to the next working day.

Pursuant to RADR 31(4), any document to be provided to the person who is the subject of the appeal must be provided to the person's counsel if the person has counsel of record. If the person does not have counsel of record the document must be provided to the person.

RADR 18(1) provides, subject to a limitation on counsel's retainer, that as soon as counsel for a person who is the subject of an appeal provides on behalf of the person a notice of appeal or a notice of intent to respond, as the case may be, or as soon as a

someone becomes counsel after the person provided notice, the counsel becomes counsel of record for the person.

RADR 34(1) sets out what the RAD requires when establishing proof that a document was provided:

- (a) an acknowledgment of receipt signed by the recipient or a statement of service, if the document was provided by hand;
- (b) a confirmation of receipt if the document was provided by registered mail, courier, fax (note the 20 page limit under RADR 32(d)) or email (note this method of delivery requires the RAD's approval RADR 32(e)) or other electronic means (note this method of delivery requires the RAD's approval RADR 32(e));
- (c) a statement of service if the document was provided by regular mail.

Pursuant to RADR 34(2) "statement of service" referred to above consists of a written statement, signed by the person who provided the document, which includes the person's name and a statement of how and when the document was provided.

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## 10.22. Judicial Review of a RAD decision

The Minister may make an application for leave and judicial review with respect to any decision of the RAD, whether or not the Minister took part in the proceedings before the RPD or the RAD [A73].

Therefore, in the event the RAD makes a decision contrary to the one that was sought by the Minister, and an HO, in consultation with his/her supervisor, believes that an application for leave and judicial review of the decision is warranted, the RAD decision should be immediately brought to the attention of Litigation Management (IRCC and CBSA).

The procedure for a HO recommendation to Litigation Management (LMD/LMU) for the filing of a judicial review (JR) of a decision of the Immigration Appeal Division (IAD) will be followed for judicial review recommendations of RPD and RAD decisions. The procedure as set out in ENF 9 – Judicial Review (<http://www.cic.gc.ca/english/resources/manuals/enf/enf09-eng.pdf>) must be followed.

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## 11. Rules applicable to appeals made by the person who is the subject of the appeal

To file an appeal the person who is the subject of the appeal must provide three copies of a written notice of appeal to the RAD [RADR 2(1)]. The RAD must then provide a copy of the notice of appeal to the Minister without delay [RADR 2(2)]. The notice of appeal must be received by the RAD within the time limit for filing an appeal set out in the regulations [RADR 2(4)].

According to RADR 2(3) the notice of appeal must include the following:

- (a) The name and telephone number of the appellant (in this case the person who is the subject of the appeal) and an address where documents can be provided to the appellant;
- (b) If represented by counsel, counsel's contact information and any limitations on counsel's retainer (see RADR 18(2));
- (c) The identification number given by the Department of Citizenship and Immigration to the appellant;
- (d) The RPD's file number, the date of the notice of decision relating to the decision being appealed and the date that they received the written reasons for the decision;
- (e) The language – English or French – chosen by the appellant as the language of the appeal; and

- (f) The representative's contact information if the RPD has designated a representative for the appellant in the proceedings relating to the decision being appealed, and any proposed change in representative.

To perfect an appeal, the appellant must provide two copies of the appellant's record [RADR 3(1)]. The RAD must then provide a copy of the appellant's record to the Minister without delay [RADR 3(2)]. The appellant's record must be received by the RAD within the time limit for perfecting an appeal set out in the regulations [RADR 3(5)].

According to RADR 3(3) the content of the appellant's record must include the following, on consecutively numbered pages, in the following order:

- (a) The notice of decision and written reasons for the RPD decision that the appellant is appealing;
- (b) All or part of the transcript of the RPD hearing if the appellant wants to rely on the transcript in the appeal, together with a declaration, signed by the transcriber, that includes the transcriber's name and a statement that the transcript is accurate;
- (c) Any documents that the RPD refused to accept as evidence, during or after the hearing, if the appellant wants to rely on the documents in the appeal;
- (d) A written statement indicating
  - i. Whether the appellant is relying on any evidence referred to in A110(4);
  - ii. Whether the appellant is requesting that a hearing be held under A110(6), and if so, whether the appellant is making an application under RADR 66 to change the location of the hearing; and
  - iii. The language and dialect, if any, to be interpreted, if the RAD decides that a hearing is necessary and the appellant needs an interpreter;
- (e) Any documentary evidence that the appellant wants to rely on in the appeal;
- (f) Any law, case law or other legal authority that the appellant wants to rely on in the appeal; and
- (g) A memorandum (limited to no more than 30 pages long if typewritten on one side or 15 pages if typewritten on both sides – RADR 3(4)) that includes full and detailed submissions regarding
  - i. The errors that are the grounds of the appeal;
  - ii. Where the errors are located in the written reasons for the RPD's decision that the appellant is appealing or in the transcript or in any audio or other electronic recording of the RPD hearing;
  - iii. How any documentary evidence referred to in paragraph (e) meets the requirements of A110(4) and how that evidence relates to the appellant,
  - iv. The decision the appellant wants the RAD to make; and
  - v. Why the RAD should hold a hearing under A110(6) if the appellant is requesting that a hearing be held.

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### 11.1. Minister's intervention

According to A171(a.4) the Minister may intervene in an appeal brought by the person who is the subject of the appeal at any time before the RAD makes a decision but only after giving notice to the RAD and the appellant. To intervene the Minister must provide a written notice of intervention to the appellant (the person who is the subject of the appeal) and the RAD together with any documentary evidence the Minister wants to rely on in the appeal [RADR 4(1)]. Use *Template notice of intervention RADR 4(1)&(2).doc*.

Pursuant to RADR 7(a), unless a hearing is held under A110(6) the RAD can render its decision without further notice to the Minister provided a period of 15 days has passed since the day on which the Minister received the appellant's record or the time limit for perfecting the appeal set out in the IRPR has expired. It is therefore strongly recommended that the notice of intervention is filed within the 15 day period described in



RADR 7(a). Additional documentary evidence or written submissions may be provided at any time before a decision is rendered [RADR 29(5)].

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**Note:** To avoid missing an opportunity to intervene in an appeal it is important to keep in mind that according to RADR 7, the RAD can make a decision as early as 15 days after the appellant's record is filed.

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According to RADR 4(2) the content of the Minister's notice of intervention is to include the following:

- (a) Counsel's contact information;
- (b) The identification number given by the Department of Citizenship and Immigration to the appellant;
- (c) The appellant's name, the RPD file number, the date of the notice of decision relating to the decision being appealed and the date that the Minister received the written reasons for the decision;
- (d) Whether the Minister is relying on any documentary evidence referred to in A110(3) and the relevance of that evidence; and
- (e) Whether the Minister is requesting that a hearing be held under A110(6) and if so, why the RAD should hold a hearing and whether the Minister is making an application under RADR 66 to change the location of the hearing.

In addition to the documents provided along with the notice of intervention (as referred to in RADR 4(1)) the Minister may provide an intervention record first to the appellant and then to the RAD [RADR 4(3)]. Use *Template intervention record RADR 4(3).doc*.

According to RADR 4(3) the content of the Minister's intervention record is to include the following, on consecutively numbered pages, in the following order:

- (a) All or part of the transcript of the RPD hearing if the Minister wants to rely on the transcript in the appeal and the transcript was not provided with the appellant's record, together with a declaration, signed by the transcriber, that includes the transcriber's name and a statement that the transcript is accurate;
- (b) Any law, case law or other legal authority that the Minister wants to rely on in the appeal;
- (c) A memorandum (limited to no more than 30 pages long if typewritten on one side or 15 pages if typewritten on both sides – RADR 4(4)) that includes full and detailed submissions regarding
  - i. The grounds on which the Minister is contesting the appeal; and
  - ii. The decision the Minister wants the RAD to make.

Any documents being provided to the RAD by the Minister when intervening in an appeal must be accompanied by proof that the documents were provided to the appellant [RADR 4(5)].

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**Note:** The IRB has confirmed that it is not necessary to provide anything more than a citation for any Canadian jurisprudence.

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## 11.2. Reply to Minister's intervention

The appellant may choose to reply to the Minister's intervention. To do so, the appellant must provide a reply record first to the Minister and then to the RAD [RADR 5(1)]. The reply record provided to the RAD must be accompanied by proof that it was provided to the Minister [RADR 5(4)]. The reply record must be received by the RAD no later than 15 days after the day on which the appellant receives the Minister's notice of intervention, the Minister's intervention record, or any additional documents provided by the Minister, as the case may be [RADR 5(5)].

According to RADR 5(2) the content of the appellant's reply record is to include the following, on consecutively numbered pages, in the following order:

- (a) All or part of the transcript of the RPD hearing if the appellant wants to rely on the transcript to support the reply and the transcript was not provided with the appellant's record or by the Minister, together with a declaration, signed by the transcriber, that includes the transcriber's name and a statement that the transcript is accurate;
- (b) Any documentary evidence that the appellant wants to rely on to support the reply and that was not provided with the appellant's record or by the Minister;
- (c) Any law, case law or other legal authority that the appellant wants to rely on to support the reply and that was not provided with the appellant's record or by the Minister; and
- (d) A memorandum (limited to no more than 30 pages long if typewritten on one side or 15 pages if typewritten on both sides – RADR 5(3)) that includes full and detailed submissions regarding
  - i. Only the grounds raised by the Minister;
  - ii. How any documentary evidence referred to in paragraph (b) meets the requirements of A110(4) or A110(5) and how that evidence relates to the appellant; and
  - iii. Why the RAD should hold a hearing under A110(6) if the appellant is requesting that a hearing be held and the appellant did not include such a request in the appellant's record, and if the appellant is requesting a hearing, whether the appellant is making an application under RADR 66 to change the location of the hearing.

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## 12. Rules applicable to appeals made by the Minister

According to A110(1) an appeal to the RAD may be made by the Minister based on a question of law, of fact or of mixed law and fact.

A110(1.1) permits the Minister to satisfy any requirement respecting the manner in which an appeal is to be filed and perfected by submitting a notice of appeal and any supporting documents. Use *Template Notice of appeal RADR 8.doc* to file the notice of appeal.

RADR 8(1) provides that for the Minister to file an appeal in accordance with A110(1.1) the Minister must provide first to the person who is the subject of the appeal, a written notice of appeal, and then to the RAD, two copies of the written notice of appeal. When providing the notice of appeal to the RAD the Minister must also provide proof that the notice of appeal was provided to the person who is the subject of the appeal [RADR 8(3)]. The Minister's notice of appeal must be received by the RAD within the time limit for filing an appeal set out in the regulations [RADR 8(4)].

According to RADR 8(2) the content of the Minister's notice of appeal is to include the following:

- (a) Counsel's contact information;
- (b) The name of the person who is the subject of the appeal and the identification number given by the Department of Citizenship and Immigration to that person;
- (c) The RPD file number, the date of the notice of decision relating to the decision being appealed and the date that the Minister received the written reasons for the decision.

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**Note:** It is highly recommended that the notice of appeal be delivered by registered mail to the person who is the subject of the appeal at least 48 hours before the end of the time limit to file an appeal.

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To perfect an appeal in accordance with A110(1.1) the Minister must provide any supporting documents that the Minister wants to rely on in the appeal, first to the person who is the subject of the appeal and then to the RAD [RADR 9(1)]. When providing the documents to the RAD the Minister must also provide proof that the documents were provided to the person who is the subject of the appeal [RADR 9(4)]. The supporting

documents must be received by the RAD within the time limit for perfecting an appeal set out in the regulations [RADR 9(5)].

As soon as the Minister submits any supporting documents (e.g. evidence or submissions) subsequent to the notice of appeal, the appeal is perfected. If nothing is filed to perfect the appeal within the time limit for perfecting an appeal described in IRPR 159.91(1)(b) the RAD may determine that the appeal has been abandoned in accordance with A168(1).

In addition to the documents referred to in RADR 9(1) the Minister may provide an appellant's record first to the person who is the subject of the appeal and then to the RAD [RADR 9(2)]. The appellant's record must be received by the RAD within the time limit for perfecting an appeal set out in the regulations [RADR 9(5)]. There is no mandatory requirement for the Minister to file an appellant's record. When an appellant record is needed use *Template appellants record RADR 9.doc* with the same style of cause as in the notice of appeal.

According to RADR 9(2) the content of the Minister's appellant's record is to include the following, on consecutively numbered pages, in the following order:

- (a) The notice of decision and written reasons for the RPD decision that the Minister is appealing;
- (b) All or part of the transcript of the RPD hearing if the Minister wants to rely on the transcript in the appeal, together with a declaration, signed by the transcriber, that includes the transcriber's name and a statement that the transcript is accurate;
- (c) Any documents that the RPD refused to accept as evidence, during or after the hearing, if the Minister wants to rely on the document in the appeal;
- (d) A written statement indicating
  - i. Whether the Minister is relying on any documentary evidence referred to in A110(3) and the relevance of that evidence; and
  - ii. Whether the Minister is requesting that a hearing be held under A110(6) and if so, why the RAD should hold a hearing and whether the Minister is making an application under RADR 66 to change the location of the hearing;
- (e) Any law, case law or other legal authority that the Minister wants to rely on in the appeal;
- (f) A memorandum (limited to no more than 30 pages long if typewritten on one side or 15 pages if typewritten on both sides – RADR 9(3)) that includes full and detailed submissions regarding
  - i. The errors that are the grounds of the appeal,
  - ii. Where the errors are located in the written reasons for the RPD's decision that the Minister is appealing or in the transcript or in any audio or other electronic recording of the RPD hearing, and
  - iii. The decision the Minister wants the RAD to make.

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**Note:** The IRB has confirmed that it is not necessary to provide anything more than a citation for any Canadian jurisprudence.

**Note:** If any additional documents or submissions are provided after the appeal is perfected this will not change the date when the appeal is considered perfected.

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### **12.1. Response to the Minister's appeal**

The person who is the subject of the appeal may respond to the Minister' appeal by providing first to the Minister and then to the RAD, a written notice of intent to respond, together with the respondent's record [RADR10(1)]. These documents must be received by the RAD no later than 15 days after (a) the day on which the respondent receives any supporting documents or (b) if the RAD allows an application for an extension of time to perfect the appeal under RADR 12, the day on which the respondent is notified of the

decision to allow the extension of time [RADR 10(6)]. The notice of intent to respond and the respondent's record must be provided to the RAD along with proof that they were provided to the Minister [RADR 10(5)].

According to RADR 10(2) the content of the respondent's notice of intent to respond is to include the following:

- (a) The respondent's name, telephone number and an address where documents can be provided to the respondent;
- (b) If represented by counsel, counsel's contact information and any limitations on counsel's retainer (see RADR 18(2));
- (c) The identification number given by the Department of Citizenship and Immigration to the respondent;
- (d) The RPD file number and the date of the notice of decision relating to the decision being appealed;
- (e) The language – English or French – chosen by the respondent as the language of the appeal; and
- (f) The representative's contact information if the RPD has designated a representative for them in the proceedings relating to the decision being appealed, and any proposed change in representative.

According to RADR 10(3) the content of the respondent's record is to include the following, on consecutively numbered pages, in the following order:

- (a) All or part of the transcript of the RPD hearing if the respondent wants to rely on the transcript in the appeal and the transcript was not provided with the appellant's record, together with a declaration, signed by the transcriber, that includes the transcriber's name and a statement that the transcript is accurate;
- (b) A written statement indicating
  - i. Whether the respondent is requesting that a hearing be held under A110(6) and if so, whether the respondent is making an application under RADR 66 to change the location of the hearing; and
  - ii. The language and dialect, if any, to be interpreted, if the RAD decides that a hearing is necessary and the respondent needs an interpreter;
- (c) Any documentary evidence that the respondent wants to rely on in the appeal;
- (d) Any law, case law or other legal authority that the respondent wants to rely on in the appeal;
- (e) A memorandum (limited to no more than 30 pages long if typewritten on one side or 15 pages if typewritten on both sides – RADR 10(4)) that includes full and detailed submissions regarding
  - i. The grounds on which the respondent is contesting the appeal;
  - ii. The decision the respondent wants the RAD to make; and
  - iii. Why the RAD should hold a hearing under A110(6) if the respondent is requesting that a hearing be held.

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## **12.2. Minister's reply to the respondent's response to the Minister's appeal**

The Minister may reply to a response made by the respondent to the Minister's appeal. To do so the Minister must provide, first to the respondent and then to the RAD, any documentary evidence that the Minister wants to rely on to support the reply and that was not provided at the time that the appeal was perfected or with the respondent's record [RAR11(1)]. Use *Template reply (subrule 11(1) RADR 11(1).doc* and the same style of cause as used for the appellant's record.

In addition to the documents referred to in RADR 11(1) the Minister may also provide a reply record, first to the respondent and then the RAD [RADR 11(2)]. Use *Template reply record RADR 11(2).doc*. The documentary evidence and the reply record, if any, must be

provided to the RAD along with proof that the documentary evidence and the reply record, if any, were provided to the respondent [RADR 11(4)].

No time limit is set out in RADR 11 as to when the Minister must provide a reply however consideration should be given to RADR 13 which states that unless a hearing is held under A110(6), the RAD may, without further notice to the parties, decide an appeal on the basis of the materials provided (a) if a period of 15 days has passed since the day on which the Minister received the respondent's record, or the time limit for providing it set out in RADR 10(6) has expired.

According to RADR 11(2) the content of the Minister's reply record is to include the following, on consecutively numbered pages, in the following order:

- (a) All or part of the transcript of the RPD hearing if the Minister wants to rely on the transcript to support the reply and the transcript was not provided with the appellant's record, if any, or the respondent's record, together with a declaration, signed by the transcriber, that includes the transcriber's name and a statement that the transcript is accurate;
- (b) Any law, case law or other legal authority that the Minister wants to rely on to support the reply and that was not provided with the appellant's record, if any, or the respondent's record; and
- (c) A memorandum (limited to no more than 30 pages long if typewritten on one side or 15 pages if typewritten on both sides – RADR 11(3)) that includes full and detailed submissions regarding
  - i. Only the grounds raised by the respondent; and
  - ii. Why the RAD should hold a hearing under A110(6) if the Minister is requesting that a hearing be held and the Minister did not include such a request in the appellant's record, if any, and if the Minister is requesting a hearing, whether the Minister is making an application under RADR 66 to change the location of the hearing.

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### **12.3. Minister's additional documents and/or submissions**

The Minister may provide documentary evidence or written submissions at any time prior to the RAD rendering a decision [A171(a.5); RADR 29(5)]. At the time of the filing of the Minister's appellant's record, if the HO is aware or expects that additional evidence or submissions may be provided in the future, it is recommended that the HO indicate so in the Minister's appellant's record.

According to RADR 29(7), the respondent may reply to the Minister's additional documents or submissions within the time limits as set out in RADR 5, which is 15 days from receipt of the Minister's additional documents or written submissions.

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**Note:** Any additional documents or submissions that are provided after an appeal has been perfected does not change the date the appeal is perfected.

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## **13. Applications (application, response, reply)**

Unless provided otherwise in the RADR:

- a party who wants the RAD to make a decision on any matter in a proceeding, including the procedure to be followed, must make an application to the RAD in accordance with RADR 37 [RADR 36(a)].
- a party who wants to respond to the application must respond in accordance with RADR 38 [RADR 36(b)].
- a party who wants to reply to a response must reply in accordance with RADR 39 [RADR 36(c)].

### **13.1. Application**

Unless provided otherwise by the RADR, an application must be made in writing and without delay [RADR 37(1)]. Use *Template application RADR 37.doc* and indicate whether the Minister is the appellant or intervenor and whether the person who is the subject of the appeal is the appellant or respondent. If a hearing date has been fixed, the RAD must not allow a party to make an application orally at the hearing unless the party, with reasonable effort, could not have made a written application before that date [RADR 37(2)].

Unless the RADR provide otherwise, in a written application, a party must (a) state the decision the party wants the RAD to make; (b) give reasons why the RAD should make the decision; and (c) if there is another party and the views of that party are known, state whether the other party agrees to the application [RADR 37(3)].

Unless the RADR provide otherwise, any evidence that the party wants the RAD to consider with a written application must be given in an affidavit or statutory declaration that accompanies the application [RADR 37(4)].

A party who makes a written application must provide (a) to any other party, a copy of the application and a copy of any affidavit or statutory declaration; and (b) to the RAD, the original application and the original of any affidavit or statutory declaration, together with proof that a copy was provided to any other party [RADR 37(5)].

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### **13.2. Responding to a written application**

A response to a written application must be in writing (use *Template response to application RADR 38.doc* indicating whether the Minister is the appellant or intervenor and whether the person who is the subject of the appeal is the appellant or respondent) and (a) state the decision the party wants the RAD to make; and (b) give reasons why the RAD should make that decision [RADR 38(1)].

Any evidence that a party wants the RAD to consider with the written response must be given in an affidavit or statutory declaration that accompanies the response [RADR 38(2)]. However, unless the RAD requires it, an affidavit or statutory declaration is not required if the party who made the application was not required to give evidence in an affidavit or statutory declaration with their application [RADR 38(2)].

The party responding to a written application must provide (a) to the other party, a copy of the response and a copy of any affidavit or statutory declaration; and (b) to the RAD, the original response and the original of any affidavit or statutory declaration, together with proof that a copy was provided to the other party [RADR 38(3)]. The documents provided under RADR 38(3) must be received by their recipients no later than seven days after the day on which the party receives the copy of the application [RADR 38(4)].

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### **13.3. Reply to a written response to an application**

A reply to a written response to an application must be in writing [RADR 39(1)]. Use *Template reply to a response to an application RADR 39.doc*.

Any evidence that the party wants the RAD to consider with the reply must be given in an affidavit or statutory declaration. However, unless the RAD requires it, an affidavit or statutory declaration is not required if the party was not required to give evidence in an affidavit or statutory declaration with their application [RADR 39(2)].

A party who replies must provide (a) to the other party, a copy of the reply and a copy of any affidavit or statutory declaration; and (b) to the RAD, the original reply and the original of any affidavit or statutory declaration [RADR 39(3)]. The documents provided under RADR 39(3) must be received by their recipients no later than five days after the day on which the party receives the copy of the response [RADR 39(4)].

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**13.4. Application to change the location of a hearing**

A party may make an application to the RAD to change the location of a hearing [RADR 66(1)]. The requirements for the application are set out in RADR 66(2) and 66(3). RADR 66(4) sets out the factors for the RAD to consider when deciding the application.

Unless a party receives a decision from the RAD allowing the application, the party must appear for the hearing at the location fixed and be ready to start or continue the hearing [RADR 66(5)].

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**13.5. Application to change the date or time of a hearing**

A party may make an application to the RAD to change the date or time fixed for a hearing [RADR 67(1)]. The requirements for the application are set out in RADR 67(2), (4), (7), (8) and (9). RADR 67(5) and 67(6) set out the factors for the RAD to consider when deciding the application.

Unless a party receives a decision from the RAD allowing the application, the party must appear for the hearing at the date and time fixed and be ready to start or continue the hearing [RADR 67(10)].

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**13.6. Application for an extension of time (person who is the subject of the appeal)**

A person who is the subject of the appeal may make an application to the RAD to extend the time to file or perfect an appeal. Such person must do so in accordance with RADR 37 with the exception that the person must provide the RAD the original and a copy of the application [RADR 6(1)]. The RAD must provide a copy of an application to the Minister without delay [RADR 6(2)]. The content of the person's application is set out in RADR 6(3).

An application by a person who is the subject of an appeal to extend the time to file an appeal must be accompanied by three copies of a written notice of appeal [RADR 6(4)].

An application by a person who is the subject of an appeal to extend the time to perfect an appeal must be accompanied by two copies of the appellant's record [RADR 6(5)].

A person who is the subject of an appeal may make an application to the RAD for an extension of time to reply to a Minister's intervention in accordance with RADR 37 [RADR 6(6)].

A person who is the subject of an appeal may make an application to the RAD for an extension of time to respond to an appeal brought by the Minister in accordance with RADR 37 [RADR 12(4)]. The contents of the application to extend the time to respond to an appeal brought by the Minister are set out in RADR 12(5).

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**13.7. Application for an extension of time (Minister)**

The Minister may make an application to the RAD to extend the time to file or perfect an appeal. The Minister must do so in accordance with RADR 37 [RADR 12(1)].

An application by the Minister to extend the time to file an appeal must be accompanied by two copies of a written notice of appeal [RADR 12(2)].

An application by the Minister to extend the time to perfect an appeal must be accompanied by any supporting documents, and an appellant's record, if any [RADR 12(3)].

To make an application for an extension of time use *Template application for extension of time RADR 12.doc* and, in accordance with RADR 37(3)(a), provide the following in the application:

- (a) The decision the Minister wants RAD to make (e.g. an extension of time to file and/or perfect an appeal);
- (b) The reasons why the RAD should make that decision; and
- (c) If the views of the person who is the subject of the appeal are known, state whether he/she agrees to the application.

Pursuant to RADR 37(5)(a), a copy of the application or any affidavit or statutory declaration must be provided to any other party.

Pursuant to RADR 37(5)(b), the Minister must provide the RAD with the original application and the original of any affidavit or statutory declaration, together with proof that a copy of such documents was provided to any other party.

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## **14. Department Policy - Officer safety and security**

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### **14.1. Perceived threats**

If a HO perceives a threat to their safety prior to a hearing, they should inform their manager. Managers should contact the IRB and, in consultation with regional security managers, make arrangements for a risk assessment and the initiation of appropriate security measures.

Situations may arise during a hearing in which a HO feels their personal safety or the safety of others is being compromised. When a HO feels their safety has been threatened, such as in situations of intimidation by witnesses, the uttering of threats or other safety concerns, they should immediately remove themselves from the situation which places their safety at risk and bring the matter to the attention of their manager. Any necessary administrative procedures (such as seeking an adjournment or recess) may be dealt with once the safety risk is no longer active.

IRB procedures for safety and security should help prevent such situations and provide guidance for managing them if they do arise.

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### **14.2. Incident report writing**

Where an incident occurs before or during a hearing where a HO feels their safety has been threatened, they should complete an incident report. Reporting procedures enable the CBSA to make important decisions regarding the safety and security of staff, ongoing training needs, and the recognition of exemplary performance in difficult situations. See ENF 7, Investigations and arrests, section 5.12.



## **Appendices**

[APPENDIX 1 – SOP: Concurrence for appeals to the RAD – Form: Recommendation to Appeal to RAD](#)

[APPENDIX 2 – Template Notice of Intervention RADR 4\(1\)\(2\)](#)

[APPENDIX 3 – Template Intervention Record RADR 4\(3\)](#)

[APPENDIX 4 – Template Notice of Appeal RADR 8](#)

[APPENDIX 5 – Template Appellant's Record RADR 9](#)

[APPENDIX 6 – Template Reply RADR 11\(1\)](#)

[APPENDIX 7 – Template Reply Record RADR 11\(2\)](#)

[APPENDIX 8 – Template Application for Extension of Time RADR 12](#)

[APPENDIX 9 – Template Application RADR 37](#)

[APPENDIX 10 – Template Response to Application RADR 38](#)

[APPENDIX 11 – Template Reply to a Response to an Application RADR 39](#)

[APPENDIX 12 – Template Notice of Withdrawal of Appeal RADR 47\(2\)](#)

[APPENDIX 13 – Template Application to Withdraw an Appeal RADR 47\(3\)](#)