

Canada Revenue Agency Directive for Independent Third Party Review for Staffing Situations

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1. Effective date

The Directive for Independent Third Party Review (ITPR) for Staffing Situations received approval from Mrs. Cheryl Fraser, Assistant Commissioner, Human Resources Branch, on May 21, 2010. It came into effect on September 7, 2010.

This directive replaces the Canada Revenue Agency (CRA) Independent Third Party Review Processing Directive dated May 1, 2005 for applicable staffing situations only. The Directive dated May 1, 2005 is still applicable to staff relations situations.

2. Application

This directive applies to non Executive Cadre (EC) employees of the Canada Revenue Agency (CRA) and to any other individuals required to comply with CRA policy by virtue of a contract or a memorandum of understanding (MOU).

The Code of Ethics and Conduct highlights for all CRA employees the expected standard of conduct and the required adherence to CRA policy instruments. Compliance with CRA corporate directives is mandatory. To assist with the interpretation and implementation of the Directive for Independent Third Party Review for Staffing Situations, a number of key terms are defined in the [Definitions](#) section.

3. Related policy instruments (also see [References](#)) This directive flows from the CRA's Staffing Program, including its Directives and Bulletins.

4. Introduction

The ITPR is an administrative process designed by the CRA in consultation with various stakeholders. The process provides a rights-based recourse mechanism to employees/candidates who believe a staffing decision to be arbitrary. The National Conflict Resolution Office (NCRO) assigns cases to an external reviewer who conducts a review and makes a decision that is final, binding, not precedent setting, and respects the CRA Staffing Program.

The purpose of this directive is to provide an overview of the recourse mechanism and outline the roles and responsibilities of all parties involved.

5. Objective and outcomes

5.1 Objective

The CRA is committed to providing an efficient recourse mechanism to employees who believe they were treated in an arbitrary way in a staffing decision by clearly defining the roles and responsibilities of each of the participants.

5.2 Outcomes

The ITPR Directive will facilitate the resolution of workplace conflicts by:

- 5.2.1 Providing clear direction to participants as to what they can expect and what is expected from them in an ITPR process.
- 5.2.2 Providing the right structure and support to help find common sense solutions and early resolution to conflicts.
- 5.2.3 Demystifying the process as every step is outlined in detail.
- 5.2.4 Providing clearer deadlines for a more efficient process that is not unduly delayed.

6. Requirements

6.1 Compliance from all of the participants: In order to achieve the objective, each of the participants will have to adhere to the roles and responsibilities outlined below.

6.2 An employee may only request an ITPR if he or she:

1. meets the eligibility criteria prescribed in [Annex L - Directive on Recourse for Assessment and Staffing](#);
2. has not sought remedy through administrative recourse under a federal Act, with the exception of the [Canadian Human Rights Act](#); and

3. has not chosen to request Decision Review.

7. Roles and responsibilities

7.1 Requestor

Requests

- 7.1.1 In order to be eligible for ITPR for staffing situations, the Requestor must respect the criteria set out in the CRA's Staffing Program and [Annex L, Directive on Recourse for Assessment and Staffing](#).
- 7.1.2 A Requestor can only submit a request for ITPR once he/she has requested and received the final results of the Individual Feedback and has chosen not to use the Decision Review process.
- 7.1.3 The Requestor submits the prescribed form (RC117) "[Request for an Independent Third Party Review](#)" by fax, email, or mail to the NCRO within **seven (7) calendar days** following the date the candidate was informed of the final results of Individual Feedback. The Requestor must also send a copy of the request to the Authorized Person responsible for the placement decision.
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- 7.1.4 Failure to submit the RC117 containing all of the required information within **seven (7) calendar days** of receiving the final results of Individual Feedback will result in the request being refused.
- 7.1.5 The Requestor must complete the RC117 form in full, particularly with respect to his/her description of what he/she considers arbitrary. The Requestor should demonstrate how the staffing decision was:
 - i. made unreasonably, capriciously, or without reason or judgement;
 - ii. not based on rationale or established policies;
 - iii. not the result of a reasoning applied to relevant considerations; or
 - iv. discriminatory.
- 7.1.6 The Requestor is entitled to one representative. The Requestor ensures that if he/she chooses to be represented, **every effort is made** to have the representative available throughout the process. If the representative is either not available or does not respond to communication within any of the timelines in this directive, the NCRO reserves the right to move the process to the next step. For example, if the Requestor's representative is unavailable during **the thirty (30) calendar day** timeframe prescribed for the exchange of information step, the NCRO reserves the right to assign the case to a reviewer when the time limit expires.

Correspondence

- 7.1.7 The Requestor copies the NCRO, the Authorized Person and the representatives when sending written communication. Note that written communication between the Requestor and his/her representative does not need to be copied to all parties.
- 7.1.8 After requesting an ITPR, the Requestor must be available to receive communication from the NCRO. If the Requestor remains unreachable **for a period of thirty (30) calendar days** after submitting his/her request, the NCRO will consider the request abandoned. The NCRO will inform the Requestor and Authorized Person of this in writing. In order to avoid the abandonment of a request, the Requestor must advise the NCRO, in writing, of any absence, change in contact information or unavailability. Extended leave does not necessarily exempt the Requestor from his/her responsibility to remain reachable and as such, the Requestor must provide alternate contact information. Cases of extended leave will be dealt with on a case by case basis.

Exchange of information and informal discussion

- 7.1.9 Once the NCRO has confirmed the eligibility of the Requestor, it will forward a checklist to the Authorized Person and to the Requestor to help guide them through the next step. This initiates the beginning of the exchange of information step, which proceeds as follows:
- a) The Requestor or his/her representative provides the Authorized Person with supporting information related to his/her allegations, which can include claims, statements, complaints, questions, concerns, why they believe the placement criteria was arbitrary, etc., and copies all parties as per paragraph 7.1.7;
 - b) The Authorized Person or his/her representative provides the Requestor with his/her own statements, justifications, concerns, etc., and copies all parties as per paragraph 7.2.4;
 - c) Both parties may continue to respond to information; however, final allegations must be submitted to the NCRO **within thirty (30) calendar days**.
- 7.1.10 Final allegations clearly outlining how the Requestor believes the staffing decision was arbitrary are required **before the expiry of the thirty (30) calendar days** allotted for this step. Note that no new allegations are permitted after the submission of the initial ITPR request. Therefore, final allegations are intended to allow the requestor to add supporting information only.
- 7.1.11 In order to promote an open and productive exchange of information and to facilitate the informal resolution of the issue, parties are encouraged to meet informally to discuss the issue at any time during the thirty (30) calendar days allotted for this step. The parties may choose to use the services of a Conflict Resolution Advisor. Information on options for an informal discussion is available on the NCRO Website: <http://infozone/english/r2732472/ec-ce/ncro-bnrc/toolsd/YourOptions-e.asp>.

7.1.12 The Requestor or his/her representative must inform the NCRO and the other party in writing of the outcome of the informal discussion. Should the parties opt for an informal discussion which does not result in the withdrawal of the ITPR request, the exchange of information will still need to be completed **within the thirty (30) calendar days** allotted for this step.

7.1.13 If during the exchange of information stage the Authorized Person discovers and acknowledges that an error in the process has occurred, he/she must implement the appropriate corrective measures. The corrective measures must be outlined in a documented agreement and signed by all of the parties. A copy of the agreement must be forwarded to the NCRO. The Requestor agrees to withdraw the ITPR request upon the implementation of the corrective measures. Further recourse, under the Staffing Program, is not available following corrective measures, but Authorized Persons must address candidates' concerns if the need arises.

In cases involving unanticipated delays

7.1.14 The Requestor or his/her representative must be available during the time period required to handle the request. An extension beyond **the prescribed thirty (30) calendar days** for exchanging information before a case is assigned to a reviewer will only be accepted by the NCRO if all parties agree to an extension. If the parties do not agree on an extension, the case will be assigned to a reviewer, who will base his/her analysis **only** on information submitted up to that point. The request for an extension must be made in writing to the NCRO **within the thirty (30) calendar days** identified previously. An extension of up to **an additional thirty (30) calendar days** may be granted. The NCRO reserves the right to assign the case to a reviewer upon the expiry of the additional thirty (30) days. Cases that require more than the additional thirty (30) calendar days will be judged by the NCRO on individual merit.

Review Stage

7.1.15 The Requestor copies the NCRO, the Authorized Person, the representatives, and the Reviewer on all written communication. Note that written communication between the Requestor and his/her representative does not need to be copied to all parties.

7.1.16 The Requestor raises any case processing or administrative issues he/she may have with the review process directly with the Reviewer. Such issues may include timeframes, delays, administration, communication, or venue.

7.1.17 The Requestor is encouraged to inform the NCRO immediately of any situations where they consider the Reviewer's actions or behaviour contravene this ITPR Directive.

7.1.18 Parties have another opportunity to resolve the issue by having an informal discussion during the review stage. Should both parties agree to do so, they are to inform the Reviewer who then informs the NCRO in writing of the intent to resolve

informally. The ITPR request is held in abeyance pending the outcome of the informal process. The request is reactivated once the Requestor informs all parties, including the NCRO, in writing that the parties are ready to continue with the review. In the event that a case is settled between the parties before a final decision is made, the case is considered closed.

- 7.1.19 The Reviewer may ask the Requestor or his/her representative to clarify information presented by the Requestor at the time the case was assigned. This information is to be provided within a timeframe determined by the Reviewer. Note that this is only supporting information, and only the allegations that were documented and provided at the time the case was assigned will be considered by the Reviewer. New allegations **cannot be raised** at this time.
- 7.1.20 The Requestor and his/her representative participate in good faith. In other words, he/she conforms to and respects all roles and responsibilities outlined in this directive, copies all parties in communications, provides all requested documentation to the Reviewer, and is present at scheduled discussions.
- 7.1.21 The Requestor or his/her representative may withdraw a request for any reason and at any time during the review process. In order to do so, an email must be sent to the NCRO and copied to all parties stating that the Requestor withdraws the request. If the issue is resolved by the parties before the Reviewer's decision is made, this constitutes a withdrawal and the Requestor or his/her representative must inform the NCRO of the withdrawal in writing and copy all parties so the file can be closed.
- 7.1.22 The Requestor treats all information regarding a request and the review as confidential. Information such as ITPR decisions and correspondence are only to be shared with the Authorized Person, the representatives, the Reviewer, and the NCRO.
- 7.1.23 The Requestor completes the ITPR Process Evaluation Form **within seven (7) calendar days** of receipt from NCRO prior to the Reviewer providing a final decision. This is done in order to ensure an unbiased evaluation of the Reviewer.

7.2 Authorized Person

Requests

- 7.2.1 The Authorized Person receives a copy of the completed (RC117) "Request for an Independent Third Party Review" form from the Requestor, the original of which is sent to the NCRO.
- 7.2.2 The Authorized Person is entitled to one representative. The Authorized Person ensures that if he/she chooses to be represented, **every effort is made** to make the representative available throughout the process. If the representative is either unavailable or does not respond to communication within any of the timelines in this directive, the NCRO reserves the right to move the process to the next step. For

example, if the Authorized Person's representative is unavailable during **the thirty (30) calendar day** time frame prescribed for the exchange of information, the NCRO reserves the right to assign the case to a reviewer when the time limit expires.

7.2.3 As outlined in [Annex L – Directive on Recourse for Assessment and Staffing](#), the Authorized Person informs the candidates who have been selected for placement that an ITPR process has been initiated and that they may be entitled to contribute to the review process, should they so choose, as outlined in section 7.5 of this directive.

Correspondence

7.2.4 The Authorized Person copies the NCRO, the Requestor and the representatives when sending written communication. Note that written communication between the Authorized Person and his/her representative does not need to be copied to all parties.

7.2.5 Subsequent to an ITPR request, the Authorized Person must be available to receive communication from the NCRO. If the Authorized Person remains unreachable **for a period of thirty (30) calendar days**, the NCRO will contact his/her immediate supervisor for follow up, and reserves the right to proceed with the review without his/her contribution.

Exchange of Information and Informal Discussion

7.2.6 Once the NCRO has confirmed the eligibility of the Requestor, it will forward a checklist to the Authorized Person and to the Requestor to help guide them through the next step. This initiates the beginning of the exchange of information step, which proceeds as follows:

- a) The Requestor or his/her representative provides the Authorized Person with supporting information related to his/her allegations, which can include claims, statements, complaints, questions, concerns, etc., and copies all parties as per paragraph 7.1.7;
- b) The Authorized Person or his/her representative provides the Requestor with his/her own statements, justifications, concerns, etc., and copies all parties as per paragraph 7.2.4;
- c) Both parties may continue to respond to information; however, final allegations must be submitted to the NCRO **within thirty (30) calendar days**.

7.2.7 Final allegations clearly outlining how the Requestor believes the staffing decision was arbitrary are required **before the expiry of the thirty (30) calendar days** allotted for this step. Note that no new allegations are permitted after the submission of the initial ITPR request. Therefore, final allegations are intended to allow the requestor to add supporting information only.

- 7.2.8 In order to promote an open and productive exchange of information and to facilitate the informal resolution of the issue, parties are encouraged to meet informally to discuss the issue at any time during the thirty (30) calendar days allotted for this step. The parties may choose to use the services of a Conflict Resolution Advisor. Information on options for an informal discussion is available on the NCRO Website: <http://infozone/english/r2732472/ec-ce/ncro-bnrc/toolsd/YourOptions-e.asp>.
- 7.2.9 Should the parties opt for an informal discussion which does not result in the withdrawal of the ITPR request, the exchange of information will still need to be completed within the thirty (30) calendar days allotted for this step.
- 7.2.10 The Authorized Person or his/her representative is required to submit specific case-related information to the Requestor or his/her representative during this exchange of information step, including information shared during Individual Feedback or the informal discussion. Any decisions related to the disclosure of information related to other candidates must be made in accordance with the provisions of Section 19 of the [Access to Information Act](#) and Section 8 of the [Privacy Act](#). To obtain additional information on access to information and privacy as they relate to recourse the Authorized Person can consult with the Resourcing Advisor and/or refer to [Understanding recourse: A guide for managers](#) and the [Staffing Bulletin on Disclosure](#).
- 7.2.11 The Authorized Person is reminded that disclosing all case-related information is part of his/her responsibility through the Staffing Authority that was delegated to him/her and for which he/she is accountable. In other words, disclosure of all case-related information is not optional for the Authorized Person (see [Annex B - Delegation of Staffing Authorities and Accountabilities](#)). Although the Reviewer cannot order the production of information, he/she may reach a decision of adverse inference from the failure of the Authorized Person to produce reasonably expected documentation.
- 7.2.12 If during the exchange of information stage the Authorized Person discovers and acknowledges that an error in the process has occurred, he/she must implement the appropriate corrective measures. The corrective measures must be outlined in a documented agreement signed by all of the parties. A copy of the agreement must be forwarded to the NCRO. The Requestor agrees to withdraw the ITPR request upon the implementation of the corrective measures. Further recourse, under the Staffing Program, is not available following corrective measures, but Authorized Persons must address candidates' concerns if the need arises.
- 7.2.13 The Authorized Person must implement the measures **within thirty (30) calendar days** from the date on the signed agreement. Within the same thirty (30) calendar days, the Authorized Person must also communicate in writing, information on how the measures were implemented. This information must be provided to the parties, the NCRO, and the Resourcing Division within the Human Resources Branch.
- 7.2.14 When corrective measures cannot be applied **within the prescribed time**, the Authorized Person must advise the parties, the NCRO, and the Resourcing Division within the Human Resources Branch of the alternate date on which the corrective

measures will be applied. The Authorized Person must also provide a written explanation of why the corrective measures cannot be applied.

In cases involving unanticipated delays

7.2.15 The Authorized Person or his/her representative must be available during the time period required to handle the request. An extension beyond **the prescribed thirty (30) calendar days** for exchanging information before a case is assigned to a reviewer will only be accepted by the NCRO if all parties agree to an extension. If the parties do not agree on an extension, the case will be assigned to a reviewer, who will base his/her analysis only on information submitted up to that point. The request for an extension must be made in writing to the NCRO **within the thirty (30) calendar days** identified previously, and an extension of up to **an additional thirty (30) calendar days** may be granted. The NCRO reserves the right to assign the case to a reviewer upon the expiry of the additional thirty (30) days. Cases that require more than the additional thirty (30) calendar days will be judged by the NCRO on individual merit.

Review Stage

7.2.16 The Authorized Person copies the NCRO, the Requestor, the representatives, and the Reviewer on all written communication. Note that written communication between the Authorized Person and his/her representative does not need to be copied to all parties.

7.2.17 The Authorized Person is required to confirm to the Reviewer the names of the selected candidates who wish to contribute and to keep them informed of the steps in the process.

7.2.18 The Authorized Person raises any case processing or administrative issues he/she may have with the review process directly with the Reviewer. Such issues may include timeframes, delays, administration, communication, or venue.

7.2.19 The Authorized Person is encouraged to inform the NCRO immediately of any situations where they consider the Reviewer's actions or behaviour contravene this ITPR Directive.

7.2.20 Parties have another opportunity to resolve the issue by having an informal discussion during the review stage. Should both parties agree to do so, they are to inform the Reviewer who then informs the NCRO in writing of the intent to resolve informally. The ITPR request is held in abeyance pending the outcome of the informal process. The request is reactivated once the Requestor informs all parties, including the NCRO, in writing that the parties are ready to continue with the review. In the event that a case is settled between the parties before a final decision is made, the case is considered closed.

- 7.2.21 The Reviewer may ask the Authorized Person or his/her representative to clarify information presented by the Authorized Person at the time the case was assigned. This information is to be provided within a timeframe determined by the Reviewer.
- 7.2.22 The Authorized Person and his/her representative participate in good faith. In other words, he/she conforms to and respects all roles and responsibilities outlined in this directive, copies all parties in communications, is present at scheduled discussions, and provides all requested documentation to the Reviewer. Note that a Reviewer may reach a decision of adverse inference against the Authorized Person if he/she fails to produce reasonably expected documentation.
- 7.2.23 Upon request from the Reviewer, the Authorized Person or his/her representative prepares a written response with respect to the issues/allegations presented by the Requestor, within the timelines determined by the Reviewer.
- 7.2.24 The Authorized Person treats all information regarding a request and the review as confidential. Information such as ITPR decisions and correspondence are only to be shared with the Requestor, the representatives, the Reviewer, and the NCRO.
- 7.2.25 The Authorized Person completes the ITPR Process Evaluation form, **within seven (7) calendar days** of receipt from the NCRO prior to the Reviewer providing a final decision. This is done in order to ensure an unbiased evaluation of the Reviewer.

Corrective Measures

- 7.2.26 The Authorized Person diligently implements any corrective measures determined by the Reviewer, in as much as these are contained within the authority given to the Reviewer in this area. When the Reviewer prescribes corrective measures, the Authorized Person must implement the measures **within thirty (30) calendar days** from the date of the decision by the Reviewer. Within the same thirty (30) calendar days, the Authorized Person must also communicate in writing, information on how the measures were implemented. This information must be provided to the parties, his/her Assistant Commissioner, the NCRO, and the Resourcing Division within the Human Resources Branch.
- 7.2.27 When corrective measures cannot be applied **within the prescribed time**, the Authorized Person must advise the parties, his/her Assistant Commissioner, the NCRO, and the Resourcing Division within the Human Resources Branch of the alternate date on which the corrective measures will be applied. The Authorized Person must also provide a written explanation of why the corrective measures cannot be applied.

Important General Considerations

- 7.2.28 Should the Authorized Person choose to cancel the staffing action or a selection process after a request for ITPR has been submitted, a written rationale for this decision is provided to the parties, to his/her Assistant Commissioner, to the NCRO and to the Resourcing Division within the Human Resources Branch, **within thirty**

(30) calendar days from the date the process was cancelled. A cancellation of the selection process nullifies the ITPR request.

7.2.29 The Authorized Person pays all direct costs associated with a review which include those associated with the Reviewer and those for the translation of the final report.

7.3 Reviewer

Review Process

7.3.1 The Reviewer independently manages the review process in accordance to this directive from the time he/she is assigned a case from the NCRO until either a final decision is rendered or the Reviewer legitimately terminates the review before reaching a final decision.

7.3.2 The Reviewer may terminate the review before issuing a final decision on the substantive issues when:

- a) A request is found to be frivolous or vexatious as per the Reviewer's interpretation of these terms;
- b) There is no jurisdiction to proceed as prescribed in the subject-specific policy;
- c) The Reviewer discovers during the process a conflict of interest or any other condition that could adversely impact his/her impartiality or ability to continue;
- d) The parties settle the issues by themselves or with the assistance of a Conflict Resolution Advisor;
- e) The Requestor withdraws his/her request;
- f) The Authorized Person cancels the staffing action or selection process in question.

When the Reviewer decides to terminate a review, the decision including the supporting rationale is documented and forwarded to the parties and to the NCRO. The mandate of the Reviewer ceases at the termination of a review.

In a situation where a Reviewer would terminate a case due to a conflict of interest, the NCRO will reassign the case to another reviewer within seven (7) calendar days of the case being terminated.

7.3.3 The Reviewer contacts the parties involved and the NCRO **within seven (7) calendar days** from accepting to manage a case to arrange a teleconference. The purpose of the teleconference is:

- a) to inform the parties about the Reviewer's own mandate and to clarify the roles and responsibilities of all the parties involved in the review process;
- b) to confirm the Reviewer's jurisdiction to review the case;
- c) to clarify the nature of the case and the issues that are the subject of the review;

- d) to describe the review process and set timelines;
 - e) to set the stage for the next phase of the review; and
 - f) to verify if accommodation is required for any parties with disabilities.
- 7.3.4 The Reviewer decides, in consultation with the parties, if the process can be managed via teleconference, e-mail, in-person meetings, videoconference, or a combination of these venues. The Reviewer plans and makes all processing arrangements in consultation with the parties while striving to minimize costs.
- 7.3.5 The Reviewer commits to completing the case **within twelve (12) weeks** from the time the case was assigned, excluding the timeframe to write the final report. If one of the parties is unable to adhere to the Reviewer's timelines and requests additional time, the Reviewer will need to assess the validity of the request. If the request is acceptable in his/her perspective, the Reviewer will obtain the consent of the other party prior to allowing the request. Any additional time required by the parties does not negate the requirement for the Reviewer to complete the case **within twelve (12) weeks**. If additional time is not granted and the Reviewer and other parties proceed with the scheduled meeting, the Reviewer issues a final decision based on the documentation/information received and on-hand.
- 7.3.6 Should an extension be required by either party **beyond the twelve (12) weeks** and all parties agree to the extension, the Reviewer must provide a written rationale to the NCRO. Requests for extensions must be supported by the Reviewer and consent must be obtained from the NCRO.
- 7.3.7 Extensions to the **twelve (12) week** time limit will be considered on individual merit and will be granted based on an agreement between the Reviewer and the NCRO.
- 7.3.8 The time limit extension excludes the timeframe for the Reviewer to write the final report.
- 7.3.9 The Reviewer sets timelines for all aspects of the review **while being mindful of the twelve (12) week** timeframe.
- 7.3.10 The Reviewer must keep the NCRO abreast of processing events and timelines during the process. This communication must be done in writing via email.
- 7.3.11 The Reviewer copies the NCRO, the Requestor, the Authorized Person, and the representatives on all written communication.
- 7.3.12 The Reviewer establishes a collaborative tone among the parties. Upon request, the Reviewer will allow the Requestor and the Authorized Person to attempt an informal discussion to resolve the issue before rendering a decision; however, the role of the Reviewer is not to mediate such an agreement. The Reviewer is to inform the NCRO when parties attempt to resolve informally.

- 7.3.13 The Reviewer leads a discussion with both parties to clarify information relevant to the original allegations presented by the Requestor at the time the case was assigned.
- 7.3.14 The Reviewer may request a written response from either the Requestor or the Authorized Person or their representatives in support of the original allegations. The Reviewer may request any information that would be attainable under the [Access to Information Act](#) and [Privacy Act](#), as well as any information that is neither protected nor confidential in nature, as it relates to the allegations. This information is merely to support the documented allegations. **The Reviewer is mandated to review only those allegations that were documented and provided at the time the case was assigned.**
- 7.3.15 In instances when the Requestor or the Authorized Person is uncooperative (i.e.: declines to produce relevant documents; fails to notify the Reviewer of absences to pre-scheduled events; or cannot be contacted for thirty (30) consecutive calendar days), the Reviewer reserves the right to rule based on information on-hand. Note that the Reviewer cannot order the production of information.
- 7.3.16 The Reviewer is not to issue any interim decision at any point in the review process.
- 7.3.17 The Reviewer may request internal subject-matter experts to provide policy-related interpretations. Such information will be made available to the participants.
- 7.3.18 The Reviewer limits participation in the review to the Requestor, the Authorized Person and/or their representatives. Candidates that were selected for placement and/or placed candidates may also participate in the review (on a voluntary basis) by providing a written submission, should they so choose. The participation of other individuals, such as subject-matter experts, is limited to the time required to provide their statements.
- 7.3.19 The Reviewer limits written submissions from the candidates selected for placement and/or placed candidates to a single submission describing why he/she feels the placement was **not** arbitrary. This contribution is to be submitted prior to any meeting or exchange of information between the reviewer and the parties. After having examined the written submissions, the Reviewer will decide whether he/she feels it necessary to include the selected candidates in the meeting with the parties.
- 7.3.20 The Reviewer may allow the presence of one observer from either party. Observers may be present for their own learning purposes and do not participate in the process. Although the Reviewer will consider the opinions of all parties regarding the presence of an observer, he/she ultimately makes a final decision on the matter.
- 7.3.21 The Reviewer reminds the participants that the review process is a private and confidential matter and that they are not to disclose information related to the case to anyone who is not involved.
- 7.3.22 The Reviewer ensures people with disabilities are accommodated and that the choice of official language is respected.

7.3.23 The Reviewer reminds the participants of their obligation to act in good faith. In other words, he/she encourages participants to respect all roles and responsibilities outlined in this directive, to provide all requested documentation, and to be present at scheduled discussions. The Reviewer reminds participants of the potential adverse impact of not acting in good faith, such as rendering a decision based only on the information that is available or terminating the review process.

7.3.24 The Reviewer must inform the NCRO in writing **ten (10) calendar days before** providing a final and binding decision in order to allow the NCRO to solicit feedback from the parties with respect to the performance of the Reviewer in the ITPR process. To ensure an unbiased evaluation of the Reviewer, evaluations must be submitted **before a final decision is made**.

7.3.25 The Reviewer issues an all-inclusive final and binding decision in an **electronic** final report **within ten (10) calendar days** of the final contact with parties. The Reviewer must forward the report electronically directly to the Requestor, the Authorized Person, the representatives and the NCRO.

7.3.26 The report will include the following:

- a) the names and work locations of the ITPR Requestor, Authorized Person, and any other participants;
- b) the nature of the issues;
- c) the allegations presented by the Requestor or his/her representative;
- d) the arguments presented by all participants;
- e) an analysis of the situation;
- f) the decision including the rationale;
- g) corrective measures where applicable;
- h) the ITPR case number and the date of final decision; and
- i) a reminder to the participants not to disclose case-related personal information about other individuals.

7.3.27 The report will not contain sensitive business related information such as taxpayer data as per [Section 241\(1\) of the Income Tax Act](#) and [Section 295\(2\) of the Excise Tax Act](#).

7.3.28 The Reviewer submits all case-related documents, excluding personal notes and/or recordings, to the NCRO for inclusion in the official case record following the completion of the case.

7.3.29 The Reviewer may be requested to clarify the corrective measures contained in the final written decision in response to a question from either party, the NCRO, or the Resourcing Division. In such instances, the supporting information would be issued by the Reviewer in writing to all parties including the NCRO.

- 7.3.30 The Reviewer respects the requirements specified in the service contract with the Agency.
- 7.3.31 The NCRO sends the Reviewer the ITPR Process Evaluation Form after receiving the final and binding decision. The Reviewer returns the completed form to the NCRO within **fourteen (14) calendar days** of receiving it.

Authority

- 7.3.32 The Reviewer may not rule on issues relating to the interpretation or application of the [Canadian Human Rights Act](#).
- 7.3.33 The Reviewer renders decisions based on his/her right and power to interpret and apply this directive. The Reviewer also renders decisions on processing matters as they may arise throughout the process.
- 7.3.34 The Reviewer adheres to the principles of procedural fairness, including the right to be heard, to question opposing party's arguments, and to access documents introduced by the opposing party. All parties have the right to actively participate in the review.
- 7.3.35 The Reviewer conducts the process bearing in mind that it is an administrative review with **no legal procedural requirements** such as swearing in of witnesses, rules of evidence, subpoena of individuals, the production of documents, or cross-examination. The Reviewer avoids using legal terminology associated with a judicial process and discourages the use of legal terminology by all parties involved.
- 7.3.36 The Reviewer complies with the laws, the CRA Staffing Program and directives governing the Agency and its employees.
- 7.3.37 The Reviewer examines the events and decisions related to the placement stage only, and not to those related to the assessment or prerequisite stages, unless there is a link between the placement criteria and the assessment or prerequisite stages.
- 7.3.38 ITPR decisions are not precedent setting, therefore the Reviewer considers each case on its own merit and is not bound by previous ITPR decisions.
- 7.3.39 The Reviewer directs corrective measures, if any, as per the Staffing Program if he/she determines that the Authorized Person's decision was arbitrary. The corrective measures that the Reviewer may prescribe are limited to:
- a) ordering the Authorized Person that an error in the internal selection process or internal staffing action be corrected. The ITPR Reviewer has no authority to order the Authorized Person as to how the error should be corrected;
 - b) recommending the revocation of the employee's appointment, if required;
 - c) recommending that another Authorized Person be involved in the decision.

Decisions challenged in Federal Court – Reviewer’s role and responsibilities

7.3.40 When an ITPR decision is challenged in Federal Court and the judge orders the decision to be reviewed, the following applies:

	Scenario	Considerations
A	The Reviewer’s decision fell outside of his/her scope as prescribed in Annex L - Directive on Recourse for Assessment and Staffing and he/she is ordered to review the decision.	The Reviewer is to complete the work within four (4) weeks of the reassignment of the case. Work is to be completed at no additional cost to the Agency.
B	The Reviewer’s decision fell within the scope as prescribed in Annex L - Directive on Recourse for Assessment and Staffing , and he/she is ordered to review the decision.	The Reviewer is to complete the work within eight (8) weeks of the reassignment of the case. The Reviewer is compensated for additional work.
C	The judge orders that the case be assigned to a new reviewer.	A new reviewer is given the full twelve (12) weeks to complete the case. The NCRO raises a new contract.

7.3.41 In scenarios A and B above, the Reviewer re-examines the decision based on information on-hand and accepts no new information or allegations. There is no further meeting with parties except upon approval from the NCRO.

7.4 National Conflict Resolution Office (NCRO)

7.4.1 The NCRO is to remain impartial at all times. This means that its role is strictly administrative with respect to the ITPR request. It does not pronounce itself on the legitimacy of a request, nor does it get involved in the content of a case. Consequently, the NCRO would not determine whether allegations submitted as final allegations are considered new. Its role is to evaluate the eligibility of a request as per the requirements outlined in [Annex L - Directive on Recourse for Assessment and Staffing](#) and to ensure that all parties involved respect the roles and responsibilities outlined in this directive.

7.4.2 The NCRO has oversight responsibility with respect to the Reviewer’s application of the directive. The NCRO will take appropriate action, up to and including termination of the Reviewer’s contract, for any clear violation. In cases of termination, the NCRO will immediately seek out a new reviewer to manage the case from the beginning.

Requests

- 7.4.3 The NCRO reviews an incoming ITPR request to verify its eligibility as per the grounds defined in the Staffing Program's [Annex L - Directive on Recourse for Assessment and Staffing](#).
- 7.4.4 The NCRO will contact the Requestor and the Authorized Person to clarify and validate matters contained in a request. A request for ITPR that is initially deemed eligible may no longer be eligible in the following situations:
- a) The circumstances giving the right to the Requestor to request ITPR change during the course of the review process; or
 - b) Previously undisclosed information surfaces which would make the request ineligible.

In such situations, the NCRO reserves the right to terminate the request.

- 7.4.5 The NCRO informs the parties in writing on what grounds a request is not eligible for ITPR.
- 7.4.6 The NCRO contacts the parties in writing **within fourteen (14) calendar days** of receiving a request to inform them whether the request is eligible for processing.
- 7.4.7 When the deadlines outlined in this directive are not respected, the NCRO reserves the right to move the process to the next step. For example, if the exchange of information step is not completed **within thirty (30) calendar days**, the NCRO reserves the right to assign the case to a reviewer based on the information submitted up to that point.
- 7.4.8 The NCRO will only allow an extension beyond **thirty (30) calendar days** for exchanging information before a case is assigned to a reviewer if all parties agree to the extension. If the parties do not agree on an extension, the case will be assigned to a reviewer, who will base his/her analysis only on information submitted up to that point. The request for an extension must be made in writing to the NCRO **within the thirty (30) calendar days** identified previously, and an extension of up to **an additional thirty (30) calendar days** may be granted. The NCRO reserves the right to assign the case to a reviewer upon the expiry of the additional thirty (30) days. Cases that require more than the additional thirty (30) calendar days will be judged by the NCRO on individual merit.

Correspondence

- 7.4.9 The NCRO follows up with parties at all stages of the process to keep them abreast of timelines.
- 7.4.10 The NCRO copies all parties on all written communication.

Review Stage

- 7.4.11 Should the case proceed to the review stage, the NCRO will assign the case to an external reviewer selected from a pre-established roster. The criteria for the selection of an external reviewer from the roster include:
- a) Geographic location;
 - b) Knowledge of the working language of the parties;
 - c) Availability to complete a case **within twelve (12) weeks**.
- 7.4.12 To optimize processing efficiencies, the NCRO will assign more than one ITPR request to a reviewer when they are related to the same management decision or selection process.
- 7.4.13 When a Requestor withdraws from the process before a final decision is rendered by the Reviewer, the NCRO acknowledges receipt of withdrawal via email, informs all the parties and closes the ITPR case file.
- 7.4.14 Once a final decision is provided by the Reviewer, the NCRO will remind the Authorized Person of his/her requirements to communicate in writing information on how the measures were implemented **within thirty (30) calendar days** from the date of the decision by the reviewer.
- 7.4.15 The NCRO solicits feedback from the parties **seven (7) calendar days** before a decision is provided with respect to the performance of the Reviewer and provides overall anonymous feedback to the Reviewer after the conclusion of a case. The NCRO also solicits feedback from the Reviewer on the overall ITPR process.
- 7.4.16 The NCRO forwards a copy of the Reviewer's complete decision to the responsible Assistant Commissioner and the Resourcing Division within Human Resources Branch for monitoring and possible follow-up purposes.
- 7.4.17 The NCRO prepares a sanitized, translated version of the Reviewer's decision which will be available on *InfoZone*.
- 7.4.18 The NCRO processes all direct costs associated with a case. The costs invoiced by the Reviewer and the cost to translate the decision are charged to the responsibility cost center of the Authorized Person.
- 7.4.19 The NCRO retains a record of related information/documentation for each case as per the Agency Record Retention Standards. Parties are assured that the NCRO will maintain confidentiality. Information is held in the strictest confidence and is stored securely with the CRA's National Conflict Resolution Office. The data is used for statistical purposes only, and all reports will be in the form of statistical summaries and do not identify any individual.

Policy related

7.4.20 The NCRO oversees the application of the ITPR Directive in the context of the established objectives and suggests revisions to senior management, in consultation with stakeholders and Unions.

7.4.21 The NCRO participates actively in the external contracting process led by the Administration Directorate of the Finance and Administration Branch to select reviewers.

7.4.22 The NCRO ensures that an adequate roster of reviewers is established to meet the demand.

7.5 Candidates Selected for Placement and/or Placed Candidates

7.5.1 Candidates selected for placement and/or placed candidates may choose to participate in the review process. They must indicate their interest in participating to the Authorized Person.

7.5.2 If they choose to participate in the review process, each candidate selected for placement and/or placed candidate will do so by providing a single written submission to the Reviewer.

7.5.3 The written submission will describe why he/she feels the placement was **not arbitrary**. This contribution is to be submitted prior to any meeting or exchange of information between the Reviewer and the parties. After having examined the written submissions, the Reviewer will decide whether he/she feels it necessary to include the selected candidates in the meeting with the parties.

7.5.4 Should they choose to provide a written submission, candidates selected for placement and/or placed candidates must be available should the Reviewer decide to include them in the meeting between parties.

7.5.5 During the ITPR process, only the Authorized Person may represent a candidate selected for placement and/or placed candidates.

7.5.6 A candidate selected for placement and/or placed/candidate is to treat all information regarding a request and the review as confidential.

7.6 Requestor or Authorized Person's Representative

7.6.1 The representative is to be available as required and to participate in good faith.

7.6.2 The representative is to provide advice and guidance throughout the ITPR.

7.6.3 The representative is to treat all information regarding a request and the review as confidential.

7.6.4 The representative completes the ITPR Process Evaluation Form **within seven (7) calendar days** of receipt from NCRO prior to the Reviewer providing a final decision. This is done in order to ensure an unbiased evaluation of the Reviewer.

7.7 Observer

7.7.1 The observer is to treat all information regarding a request and the review as confidential. Observers may be present for their own learning purposes and do not participate in the process.

7.7.2 The observer does not advocate on behalf of the Requestor or the Authorized Person.

7.8 Access to Information and Privacy

The access to and disclosure of any personal information is subject to the requirements of the [Privacy Act](#) and the [Access to Information Act](#).

Personal information regarding the Requestor and relevant to the case will be readily provided to him/her and the Reviewer, by the Authorized Person.

Personal information regarding other individuals could be available to the Requestor and the Reviewer at management's discretion, when it is determined that a "consistent use" applies in the context of Section 8 of the [Privacy Act](#).

The Reviewer cannot order an Authorized Person to release information that may be requested by the Requestor, and will be free to consider the type of impact related to the lack of availability of information in his/her final decision.

8. Assessment and review

The NCRO is responsible for the scheduled review of this directive every five years, as well as for any ad hoc reviews deemed necessary.

To support the review process, the NCRO is also responsible for identifying and undertaking any monitoring and assessment activities that will help it determine whether the directive's objective remains relevant and achievable and whether its requirements are being adhered to.

9. Definitions

- **Arbitrary:** In an unreasonable manner, done capriciously; not done or acting according to reason or judgment; not based on rationale or established policy; not the result of a reasoning applied to relevant considerations; discriminatory, i.e., as listed as the prohibited grounds of discrimination in the [Canadian Human Rights Act](#).

- **Authorized Person:** Person who has been granted the authority to exercise a specific staffing action in accordance with the CRA's [Delegation of Human Resources Authorities](#).
- **Conflict Resolution Advisor:** An independent, confidential, neutral third party CRA employee available to provide employees with information on conflict resolution and help employees find ways to resolve their conflict situations.
- **Decision Review:** An internal process conducted by a Decision Reviewer (supervisor of the Authorized Person responsible for the decision) who reviews a staffing decision that was taken by an Authorized Person or delegate.
- **Individual Feedback:** A mandatory step before proceeding to other forms of staffing recourse. It is also a key element in the career management process of the Agency, allowing employees to receive input on development needs.
- **Informal Discussion:** Similar to Individual Feedback, the Requestor and the Authorized Person discuss the Requestor's concerns regarding his/her staffing situation.
- **Parties:** A term that represents the requestor and his/her representative as well as the Authorized Person and his/her representative.
- **Representative:** A person of the party's choice who supports and/or advises the party throughout the ITPR process.
- **Requestor:** Employee/candidate requesting ITPR.
- **Resourcing Advisor:** Provides advice and guidance to management, employees and the public on matters related to resourcing (Staffing Program).
- **Staffing Action:** Action described in the Staffing Program generally applicable to employees of CRA or other federal government departments or agencies.
- **Selection Process:** A principal mechanism for the appointment and promotion of Agency employees and for recruitment of new employees to the CRA. It is the means by which individuals express interest in a job opportunity and are considered and selected for placement. (This also includes informal selection processes such as call letters.)

10. References

The Directive for Independent Third Party Review for Staffing Situations is based on the authorities set out in the legislation listed below. The directive must be administered and implemented in conjunction with the other references listed below:

Legislation

- [Canada Revenue Agency Act](#)
- [Income Tax Act](#)
- [Excise Tax Act](#)
- [Canadian Human Rights Act](#)
- [Access to Information Act](#)
- [Privacy Act.](#)

CRA policy instruments

- [CRA Staffing Program](#)
- [Delegation of Human Resources Authorities](#)
- [Annex B - Delegation of Staffing Authorities and Accountabilities](#)
- [Annex L - Directive on Recourse for Assessment and Staffing](#)
- [Conflict Resolution Policy](#)

Web or intranet pages

- [Understanding recourse: A guide for managers](#)
- [Staffing Bulletin 2005-05: Placement](#)
- [Staffing Bulletin 2006-02: Disclosure of Information](#)
- [Staffing Bulletin 2006-06: Memorandum to Agency Management Committee Members - Disclosure of Information](#)
- [RC117 - Request for an Independent Third Party Review](#)
- [National Conflict Resolution Office – Understand your options](#)

11. Enquiries

Questions about this directive should be directed to the National Conflict Resolution Office at 613-946-1411 or at the Mailbox: [HR/RH, NCRO/BNRC ITPR/RTI](#).

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