

**CANADA REVENUE AGENCY (CRA)
INDEPENDENT THIRD PARTY REVIEW (ITPR) PROCESSING DIRECTIVE**

INTRODUCTION

The Independent Third Party Review is an administrative process designed by the Agency in consultation with stakeholders, including the unions. The process provides a rights-based recourse mechanism to employees regarding a workplace dispute. It is linked to the CRA Dispute Resolution Policy and, in staffing related matters, the CRA Staffing Program. The Office of Dispute Management (ODM) assigns cases to an external arbitrator who is mandated to conduct a review and to make a decision that is final, binding, and that respects the CRA HR Regime.

OBJECTIVE

The objective of the directive is to provide a framework that allows an employee dispute to be reviewed fairly, expeditiously and cost effectively.

1. APPLICATION

A. The Directive applies to the following situations:

1. Staffing as per the Staffing Policy at the CRA. <http://infozone/english/r2732472/hrpolicy/staffing/AnnexL.pdf>
2. Staff Relations in the following circumstances:
 - Lay-off or demotion for any reason other than lack of discipline or misconduct for an employee appointed to an indeterminate position.
 - Grievances relating to some Agency policies in accordance with the Procedure for Dealing with Grievances Presented on CRA Policies. It is important to remember that this procedure includes specific guidelines for handling grievances.

B. ITPR is not available to individuals that are subject to the Agency's Human Resources policy framework for the Executive Cadre (EX Group).

- C. An employee cannot request an Independent Third Party Review (ITPR) if he or she has sought remedy through administrative recourse under a federal Act, with the exception of the Canadian Human Rights Act.¹

2. ITPR PROCESSING STEPS AND OVERVIEW

<i>Step</i>	<i>Overview</i>
A. An employee requests ITPR.	An employee initiates a request for ITPR as per prescribed requirements.
B. The employee and the manager involved in the dispute may attempt to resolve the matter using an informal or alternative dispute resolution (ADR) approach.	An opportunity for both parties to attempt to resolve the issues in an informal manner, by themselves, with or without the assistance of a neutral third party such as a mediator or/and ADR advisor and/or a representative. The request for ITPR is held in abeyance for 14 calendar days while an informal resolution is attempted.
C. The ODM reviews the request to determine if it is eligible.	The ODM assesses whether or not a request for ITPR is eligible for processing based on the applicable Agency policy and/or directive and subsequently informs the requestor.
D. When the dispute is not resolved, the employee and the manager involved in the dispute exchange and review relevant information before the case is assigned to a reviewer.	An opportunity for both parties to formally exchange information regarding the issues on hand so as to raise the awareness regarding the interests and positions of both sides, prior to assigning the case to an external reviewer.
E. The case is assigned to a reviewer.	The ODM assigns the case to a reviewer who becomes responsible for processing all aspects of the case from this point onward until the parties resolve the dispute or until a final decision is rendered.
F. The review phase is managed by the reviewer:	
1. Introduction	Preliminary processing and case substance-related discussions among the parties, lead by the reviewer.

¹In adding this, we wish to avoid duplication of recourse, e.g. an employee appears before the Public Service Staff Relations Board (PSSRB) and requests an ITPR for the same issue.

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| 2. Exchange of information among the parties. | A requirement to exchange information regarding the issues on hand among the parties, if this was not accomplished or fully completed earlier. |
| 3. Each party makes their case to the reviewer. | An opportunity for each party to explain their position, interests and concerns, and to question the other party's position, interests and concerns. |
| 4. Final decision by the reviewer with respect to the issues brought forward. | The reviewer completes his/her mandate by issuing a final written decision on the substantive issues involved in the case, including issuing corrective measures when warranted. |

G. Post review activities and follow-up. Action items by various stakeholders, following the final decision.

3. ROLES AND RESPONSIBILITIES

A. Employee requesting ITPR (Requestor)

1. The requestor submits a request using the “Request for an Independent Third Party Review ” form. The form, number RC117, is available from the local human resources office or on Infozone at:
<http://infozone/english/r1713497/formpub/files/PDFFiles/rc117-fill-05e.pdf>

In staffing related situations, in order to be eligible, the requestor must observe the criteria determined by the Agency's Staffing Policy. <http://infozone/english/r2732472/hrpolicy/staffing/AnnexL.pdf>

The requestor must include the following information:

- a. Identity of the requestor: name, telephone number, and mailing address;
- b. Name of the decision-making manager;
- c. Type of decision taken by management, such as, not selected for placement at the placement phase of a selection process;
- d. For a staffing-related request a description of what is arbitrary is required; it is not sufficient to state that the decision is arbitrary;

The requestor may submit missing information if the original request is incomplete, however the initial 7-day time limit applies. In the event the requestor does not submit additional information within this time frame, the initial allegations will be considered as final for the review.

2. The requestor may have an informal discussion with the manager at any time to resolve the matter, with or without the assistance of a representative or a conflict resolution neutral service provider such as an ADR Advisor or a mediator. Information on *Your Options* is available on the ODM website: <http://infozone/english/r2732472/conflict/YourOptions.asp>

When an attempt is made to resolve the complaint by using an ADR approach, the requestor informs the ODM within (7) seven calendar days after getting commitment from the respondent that there is an opportunity to resolve before going to an ITPR.

3. The requestor provides more specific information to the manager, as warranted, with respect to the initial issues/allegations during the pre-case exchange of information step.
4. The requestor ensures that, if s/he elects to be represented, that there will be due diligence to make this person available or substituted during the time period involved to process the request.
5. The requestor submits a final version of the issues /allegations to be reviewed, following the exchange-of-information step and upon request from the ODM, as warranted.
6. The requestor provides information in support of the issues /allegations during the review within a timeframe determined by the reviewer.
7. The requestor raises case processing issues with the reviewer and participates in good faith.
8. The requestor may withdraw a request at any time during the review process.

9. The requestor treats all information regarding a request and the review as confidential.

B. Manager whose decision is being reviewed (Respondent)

1. The respondent may have an informal discussion with the requestor at any time to resolve the matter, with or without the assistance of a representative or a neutral conflict resolution service provider. Information on *Your Options* is available on the ODM website: <http://infozone/english/r2732472/conflict/YourOptions.asp>
2. In a staffing situation the respondent informs the candidates that have been selected for placement that an ITPR process is being initiated and that they are entitled to partake in the review process.
3. The respondent is required to confirm to the reviewer the names of the selected employees who wish to partake, to keep them informed of the steps in the process and to grant them the appropriate leave as required.
4. The respondent ensures that, if s/he elects to be represented, that there will be due diligence to make this person available or substituted during the time period involved to process the request.
5. With regard to the provisions of the Access to Information and Privacy Acts and in consultation with a Human Resources Advisor, as required, the respondent remits specific case-related information to the requestor during the pre-case exchange of information step.
6. The respondent prepares a written response with respect to the issues /allegations presented by the requestor, within the timelines determined by the reviewer, as required.
7. The respondent raises case processing issues, as required, with the reviewer and participates in good faith.
8. The respondent diligently implements the corrective measures issued by the reviewer, in as much as these are contained within the authority given to the reviewer in this area.
9. When the reviewer prescribes corrective measures, the respondent communicates in writing on how the measures were implemented to the parties, to his/her Assistant Commissioner, the ODM and, in a staffing situation, to the Resourcing and Career Management Division within the Human Resources Branch, within 30 calendar days from the date of the decision by the reviewer.

10. When the respondent chooses to cancel a staffing process after a request for ITPR has been assigned to a reviewer, a written rationale for this decision is provided to the parties, to his/her Assistant Commissioner, to the ODM and to the Resourcing and Career Management Division within the Human Resources Branch, within 30 calendar days from the date of his decision.
11. The respondent treats all information regarding a request and the review as confidential.
12. The respondent pays all direct costs associated with a review, that is, the costs associated with the reviewer and the cost for the translation of the final report.

The contract with reviewers allows for the following charges:

- i. One all-inclusive professional fee for the administration, initial preparation, one day of “hearing” and report writing. For the purpose of the administration of the contracts, “hearing” time consists of the time spent to review the case, including reading and reflecting on the material submitted, talking /teleconferencing with the parties on case-related substantive matter, meeting with the parties in person and/or through videoconferencing, and reflecting on the nature of the decision.
- ii. All out-of-pocket expenses for travel (as per CRA policy), meeting rooms when applicable, telecommunication and mailing.
- iii. A professional fee “adder” for each additional half day of “hearing” time.

C. Requestor or respondent representative, accompanying person

1. To be available as required and to participate in good faith.
2. To treat all information regarding a request and the review as confidential.

D. Observer

To treat all information regarding a request and the review as confidential.

E. Candidates that are selected for placement (Staffing situation)

1. To indicate their interest in participating in the review process when informed by the respondent.
2. To be available and to participate in the review process, as directed by the reviewer.
3. To treat all information regarding a request and the review as confidential.

F. Reviewer

1. The reviewer independently manages the review process from the time he/she receives a case from the ODM until:
 - A final decision is rendered;
 - The parties in dispute agree to settle the matter prior to a decision by the reviewer, or;
 - The reviewer terminates the review prematurely prior to reaching a final decision.
2. The reviewer contacts the parties in dispute, together, within seven (7) calendar days from accepting to manage a case:
 - a) To inform them about his/her own mandate, and to clarify their role and responsibilities and those of their representatives in the review process;
 - b) To confirm his/her 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 timelines;
 - e) To confirm the participation of the candidates that were selected for placement; and
 - f) To set the stage for the next phase of the review.
3. The reviewer endeavours to complete the case within 9 weeks from the time of receiving it. If one of the parties seeks more time, the reviewer will need to assess the validity of the request and, if acceptable in his/her perspective, obtain the consent of the other party prior to allowing the request. If an extension is not granted, the reviewer issues a final decision report based on the documentation /information received.

Exceptionally and as a result of a discussion between the ODM and the reviewer, the 9-week time limit may be extended. The reviewer advises the parties of the time limit extension.

The time limit extension excludes the timeframe to write the final report.

4. The reviewer keeps the ODM abreast of processing events and timelines during the process.
5. The reviewer sets a collaborative tone among the parties. This includes allowing the requestor and the manager to settle the dispute, if and when the opportunity arises, prior to rendering a decision. However, the role of the reviewer is not to mediate such an agreement.

6. The reviewer renders decisions on jurisdiction, and on processing matters, when applicable, as they may arise throughout the process.
7. The reviewer leads a discussion with both parties to identify the need to exchange further information that is relevant to the allegations presented by the requestor and the nature of such information, as warranted.
8. The reviewer sets timelines for all aspects of the review in the context that it needs to be completed within the 9-week time limit.
9. The reviewer may request written documentation in support of the allegations from the requestor. In a staffing situation, the reviewer is mandated to review only those allegations that were documented at the time the case was assigned.
10. The reviewer may request a written response from the manager with respect to the issues /allegations presented by the requestor.
11. The reviewer decides, at any step of the process, if the matter can be managed via teleconferencing, e-mailing, in-person meetings, videoconferencing, or a combination of these venues. The reviewer plans and makes all processing arrangements in consultation with the parties, as required, with an interest in minimizing costs.
12. The reviewer limits participation in the review to the requestor, the manager and/or their representative, and the candidates that were selected for placement. The participation of other individuals is limited to the time required to provide testimony.
13. The reviewer should allow the presence of an observer from either party.
14. The reviewer determines the nature and extent of the participatory rights of candidates that were selected for placement.
15. The reviewer reminds the participants that the review process is a private matter and that they are not to disclose information related to the case to anyone who is not involved.
16. The reviewer gives expression 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.

17. The reviewer conducts the process bearing in mind that it is an administrative review with no legal requirements such as swearing in of witnesses, rules of evidence, subpoena individuals, the production of documents, or cross-examination. The reviewer avoids using legal terminology associated with a judicial process.
18. The reviewer complies with the laws, policies and directives governing the Agency and its employees.
19. On staffing matters, the reviewer examines the events and decisions related to the placement phase only, and not to those related to the assessment or prerequisite phases, unless there is a link between the placement criteria and the assessment or prerequisite criteria.
20. The reviewer ensures people with disabilities are accommodated and that the choice of official language is respected.
21. The reviewer may request internal subject-matter experts to provide policy-related interpretations as required. Such information will be made available to the participants.
22. The reviewer considers each case on its own merit and is not bound by previous ITPR decisions.
23. The reviewer encourages participants to act in good faith, to provide 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 on the information that is available, allowing the request or terminating the review process.
24. In staffing-related cases, the reviewer determines the participatory rights of the employees selected for placement participants on a case-by-case basis.
25. The reviewer issues an all-inclusive final and binding decision in a final report within ten (10) calendar days of completing the “making the case” phase.

The report will include the following: the names and work location of the requestor, the respondent, and any other participants, the nature of the issues, the allegations presented by the requestor, the arguments presented by all participants, an analysis of the situation, the decision taken including the rationale, corrective measures where applicable, the ITPR case number and the date of final decision.

The report will include a reminder to the participants not to disclose case-related personal information about other individuals, and will not contain sensitive business related information such as taxpayer data.

26. The reviewer forwards the report directly to the parties, that is the requestor and the respondent, and to the ODM.
27. The reviewer advises the ODM in writing in the event a case is settled between the parties prior to a final decision, at which point the case is considered closed.
28. The reviewer specifies which of the following corrective measures apply²:

Type of case	Corrective Measures
Staffing	Order correction of the error in the process. Recommend revocation of appointed employee, if required. Recommend having another manager involved in the decision.
Lay-off or demotion for any reason other than lack of discipline or misconduct ³	Order employee's reintegration or return to the previous classification group and level. The reviewer may not rule on issues relating to the interpretation or application of the Canadian Human Rights Act. Order payment of lost pay and benefits.
Grievances relating to some Agency grievances under the Procedure for Dealing with Grievances Presented on CRA Policies.	Order error correction.

² Refer to the suggestions set forth in the document, "[Possible Corrective Measures]".

³ The change is made to reflect the language set out in the *Public Service Labour Relations Act*. In addition, we have deleted "involuntary lay-off" for the same reasons.

29. The reviewer terminates 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 requestor and the respondent settle the issues by themselves or with the assistance of a mediator;
 - d) The requestor is uncooperative: declines to produce relevant documents or fails to notify the reviewer of absences to pre-scheduled events;
 - e) 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.

A decision to terminate a review, including the supporting rationale, is documented and forwarded to the parties and to the ODM. The mandate of the reviewer ceases at the termination of a review.

30. The reviewer submits all case-related documents, excluding personal notes, to the ODM for inclusion in the official case record following the completion of the case.
31. The reviewer provides, upon request, a rationale for the billing of any professional adder fee.
32. The reviewer respects the requirements specified in the service contract with the Agency.

G. Office of Dispute Management

Processing requests

1. The ODM reviews an incoming request to verify whether it meets the requirements for ITPR processing by an external reviewer, as per the circumstances and grounds defined in the Agency policy. The ODM may contact the requestor and the respondent to clarify and /or validate matters contained in a request.
A request for ITPR that is initially eligible for processing may no longer be eligible if the circumstances giving the right to the employee to request ITPR change during the course of the review process, for instance, when there are no longer candidates selected for placement in a staffing situation.
2. The ODM contacts the parties to inform them whether the request is eligible for processing and invites them to consider the use of an informal or ADR approach.

3. The ODM informs the parties on what grounds a request is not suitable for processing, as required.
4. The ODM requests information from the parties regarding the outcome, within 14 calendar days, when an attempt to resolve through ADR is made.
5. The ODM will accept a delay in the processing of a request, only when both parties agree to the delay.
6. The ODM requests that the respondent contact the requestor to exchange, prior to assigning the case to a reviewer and within fourteen (14) calendar days, all relevant information regarding the request, as determined by the parties.
7. The ODM contacts the parties seven (7) calendar days after the pre-case exchange of information step, to advise them that the case will be assigned to a reviewer. If more time is required to complete the exchange of information, both parties will need to agree to an end date, after which the ODM will assign the case to a reviewer.
8. In a staffing-related case, the ODM provides the requestor with a 7-calendar-day window of opportunity to revise /refine his/her allegations in writing, regarding what was arbitrary. The reviewer's mandate will be limited to the review of these allegations. Should the requestor not respond within the 7-days, the initial allegations will be considered as final for the review.
9. The ODM assigns 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 nine (9) weeks; and
 - d) "Next in line on the roster" approach.
10. To optimize processing efficiencies, the ODM may assign more than one ITPR request to a reviewer when they are related to the same management decision or process, and /or occur in the same location during the same time frame.
11. The ODM facilitates the resolution of processing issues in situations where the directive is not respected.
12. When a requestor withdraws from the process, prior to a final decision by the reviewer, the ODM will seek to obtain written confirmation of withdrawal, without conditions, from the requestor.

13. The ODM monitors the use of the ITPR, including the implementation of corrective measures.
14. The ODM prepares a sanitized, translated version of the reviewer's decision that is available on Infozone and accessible by the Unions.
15. The ODM forwards a copy of the reviewer's complete decision to the responsible Assistant Commissioner, and the relevant functional division within the Human Resources Branch for monitoring and possible follow-up purposes.
16. The ODM solicits feedback from the parties with respect to the performance of the reviewer and provides overall /anonymous feedback to the reviewer after the conclusion of a case.
17. The ODM processes all direct costs associated with a case: the costs invoiced by the reviewer and the costs incurred to translate the decision are billed to the responsibility center account of the respondent in the case.
18. The ODM retains a record for each case as per the Agency Record Retention Standards.
19. The CRA includes mediation as a viable option within the Dispute Resolution System. Subsequent to an ITPR, the ODM reminds both sides that mediation services are available to them should they wish to share how their relationship may have been impacted and what they may need from one another to maintain a professional relationship.

Policy related

20. The ODM oversees the application of the ITPR processing directive in the context of the established objectives and suggests revisions to senior management, in consultation with stakeholders including the unions.
21. The ODM participates actively in the external contracting process lead by the Material Management Division of the Finance and Administration Branch to select reviewers.
22. The ODM ensures that an adequate roster of reviewers is on stand-by to meet the demand.

4. 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 respondent.

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 the *Privacy Act*.

A reviewer cannot order a respondent 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.

5. INQUIRIES

Please contact the Office of Dispute Management at 1-877-418-7713 or at the Mailbox: [HR/RH-ODM/BGD Office of Dispute Management](#)